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PROCEEDINGS

JUDGE JONES: Let the record show that this portion of this morning's hearing pertains to the Ameren dockets only so the transcripts that emerge from this hearing will be specific to the Ameren dockets.

As noted, these are Dockets 05-0160, 0161 and 0162, Central Illinois Light Company, d/b/a AmerenCILCO, et al. These are the Ameren Company procurement proposal dockets.

Appearances have already been entered this morning in the Ameren dockets. I do not think there is a need to require parties to go through that drill again at this time, so the appearances for Ameren docket purposes will be deemed to be the same as those that were entered a few moments ago when the two dockets were called at the same time.

Are there any other appearances? Let the record show there are not.

To briefly discuss scheduling, we hereby go off the record.

1 (Whereupon an off-the-record
2 discussion transpired at this
3 time.)

4 JUDGE JONES: Back on the record.

5 Okay. I believe we're ready to begin
6 with the cross-examination of the witnesses this
7 morning. It appears that the witness sequence is the
8 same as on the previous version of the schedule.

9 Are the Ameren Companies ready to
10 proceed with the next witness?

11 MR. FLYNN: Yes, we are.

12 Our first witness this morning is
13 Mr. Frame.

14 JUDGE JONES: Sir, please remain standing for a
15 moment and we'll swear you in.

16 (Whereupon the witness was sworn
17 by Judge Jones.)

18 JUDGE JONES: Thank you. Please have a seat.

19 If anybody is having any trouble
20 hearing, please let us know and we'll do what we need
21 to do.

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RODNEY FRAME

called as a witness herein, on behalf of Ameren
Companies, having been first duly sworn on his oath,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FLYNN:

Q. Would you please state your name for the
record?

A. My name is Rodney Frame (F-r-a-m-e).

Q. And by whom are you employed?

A. Analysis Group.

Q. And on whose behalf are you testifying in
this proceeding?

A. The Ameren Companies.

Q. Mr. Frame, did you prepare rebuttal
testimony in this case?

A. Yes, I did.

Q. All right. I refer you to a document
previously marked as Respondent's Exhibit 13.0
bearing the caption "Rebuttal Testimony of Rodney
Frame" dated July 13, 2005.

Is this a copy of your rebuttal

1 testimony?

2 A. Yes, it is.

3 Q. And is it true and correct to the best of
4 your knowledge?

5 A. Yes, it is.

6 Q. All right. You also sponsored Respondent's
7 Exhibit 13.1 which are qualifications also dated
8 July 13, 2005, is that correct?

9 A. Yes, it is.

10 Q. Is that information true and correct to the
11 best of your knowledge?

12 A. Yes, it is.

13 Q. And did you file surrebuttal testimony in
14 this case?

15 A. I did.

16 Q. I refer you to a document previously marked
17 as Respondent's Exhibit 20.0 bearing the caption
18 "Surrebuttal Testimony of Rodney Frame" dated
19 August 29, 2005.

20 Is this a copy of your surrebuttal
21 testimony?

22 A. Yes, it is.

1 Q. And is that true and correct to the best of
2 your knowledge?

3 A. Yes, it is.

4 MR. FLYNN: Judge, at this time, I would move
5 for admission into evidence of Respondent's Exhibits
6 13.0 which was filed on e-docket on July 13, 2005,
7 13.1 also filed on e-docket on July 13, 2005, and
8 20.0 filed on e-docket on August 29, 2005.

9 JUDGE JONES: Any objections to the admission
10 of those exhibits?

11 Let the record show there are not.

12 Let the record show that Respondent's
13 Exhibits 13.0, rebuttal testimony, and 13.1 are
14 admitted into the record as filed on e-docket on
15 July 13, 2005.

16 Also, Respondent's Exhibit 20.0, Frame
17 surrebuttal, is admitted into the evidentiary record
18 as filed on e-docket on August 29, 2005.

19 (Whereupon Respondent's Exhibits
20 13.0, 13.1 and 20.0 were
21 admitted into evidence at this
22 time.)

1 MR. FLYNN: Thank you, Judge.

2 Mr. Frame is tendered for
3 cross-examination.

4 JUDGE JONES: Thank you.

5 It appears there are parties for
6 cross-examination of Mr. Frame.

7 Who would like to lead off?

8 MR. RIPPIE: I'd be happy to start.

9 JUDGE JONES: Mr. Rippie?

10 MR. RIPPIE: Good morning, Mr. Frame. My name
11 is Glenn Rippie. I'm an attorney for Commonwealth
12 Edison, and I have just a very few questions for you
13 this morning.

14 CROSS-EXAMINATION

15 BY MR. RIPPIE:

16 Q. What is opportunity cost?

17 A. I guess I could explain it by an example.

18 If the marginal cost of a generating
19 unit was say \$50 a megawatt hour and the market price
20 was \$60 a megawatt hour, then if I don't sell it at
21 the market price, then I'm sacrificing that market
22 price, so that is the opportunity cost, what I'm

1 giving up by pursuing one alternative instead of
2 another.

3 Q. Mr. Frame, do you have an opinion as to
4 whether or not it is anticompetitive for a seller of
5 electricity to refuse to sell at less than its actual
6 opportunity cost?

7 A. I would think that the opportunity cost
8 would end up being a price that was the market price,
9 so I would not think that would be anticompetitive,
10 no, sir.

11 Q. Will you please assume for the next few
12 questions that the Ameren CP-A is rejected by the
13 ICC? Are you with me?

14 A. I am.

15 Q. Is there any reason to believe that that
16 rejection would result in any change in the rates of
17 wholesale sellers who might otherwise compete in the
18 Ameren auction?

19 A. I'm not sure I understand the question with
20 respect to the rates of wholesale sellers.

21 Q. You understand that wholesale sellers are
22 regulated by FERC?

1 A. I do.

2 Q. And that they have rates on file with the
3 FERC that may be cost-based rates or market-based
4 rates?

5 A. Right. They generally would be
6 market-based prices I would call them, but that's
7 where my hang-up was.

8 Q. Okay. And my question was actually
9 intended to be pretty simple.

10 Do you have any reason to believe that
11 were the ICC to reject Ameren's CP-A proposal that
12 that would result in any revision in the FERC-filed
13 rates of the wholesale sellers that might compete in
14 that auction?

15 A. It's not obvious to me why it would, no,
16 sir.

17 Q. To put a point on it though, sellers that
18 have marked-based rate authority would still have
19 market-based rate authority?

20 A. Things would not change in that regard.
21 Yes, of course they would.

22 Q. Are you aware of any reason if the Ameren

1 CP-A were rejected to believe that sellers would be
2 willing to offer energy to Ameren at prices less than
3 market?

4 A. I can't think of any reason why they would.

5 MR. RIPPPIE: Thank you. That's all I have.

6 JUDGE JONES: I believe there are a couple
7 other parties who have cross-examination of
8 Mr. Frame.

9 Ms. Hedman?

10 MS. HEDMAN: Thank you.

11 Good morning Mr. Frame. My name is
12 Susan Hedman. I'm with the Office of the Attorney
13 General, and I represent the People of the State of
14 Illinois in these Ameren dockets.

15 THE WITNESS: Good morning.

16 CROSS-EXAMINATION

17 BY MS. HEDMAN:

18 Q. I'd like you to turn to Page 9 of your
19 surrebuttal testimony to the middle of the page where
20 you suggest that Dr. Rose may think that outcomes
21 under cost of service regulation will always be
22 preferable to market determined outcomes.

1 Do you see that section in your
2 testimony?

3 A. I have Page 9.

4 Q. Now, Dr. Rose doesn't actually take that
5 position, does he?

6 A. I think this was an inference I was making
7 probably based upon the price comparisons that he had
8 put in his testimony that I had responded to that
9 ignored the fuel cost, the fuel price changes. He's
10 simply silent on those fuel price changes.

11 Q. Well, the question I asked you was whether
12 or not he might prefer the outcomes under cost of
13 service regulation over market determined outcomes
14 which is what you say in the middle of Page 9.

15 A. Was that a question?

16 Q. Yes.

17 A. I'd ask you to repeat it, please.

18 Q. The first question I asked you also that
19 I've just repeated is whether or not Dr. Rose says
20 anywhere in his testimony that he prefers cost of
21 service regulation over market determined outcomes?

22 A. I'm going to need to look at Mr. Rose's

1 testimony if you'll bear with me a minute.

2 Q. Certainly.

3 JUDGE JONES: While the witness is doing that,
4 I would note that we do have a lapel mike here so if
5 we do get somebody in Chicago or if we're having
6 trouble hearing in here, just let us know and we'll
7 give the lapel mike to the witness.

8 (Pause)

9 MS. HEDMAN: I'll withdraw the question and ask
10 you something else.

11 THE WITNESS: Very well.

12 Q. Would you be surprised to learn that when
13 Dr. Hieronymus in his rebuttal testimony in the
14 companion docket involving ComEd raised exactly the
15 same issue you have raised in your surrebuttal
16 testimony, the issue we just discussed, accusing
17 Dr. Rose of preferring cost of service regulation
18 over market determined outcomes, that Dr. Rose
19 replied unequivocally in sworn testimony that nothing
20 in my testimony states or implies that Illinois'
21 original decision to move away from traditional
22 rate-based regulation was a mistake. On the

1 contrary, I have written about the limitations and
2 inefficiencies of rate-based regulation in the past.

3 Would you be surprised that he said
4 that?

5 MR. FLYNN: Objection. Foundation and improper
6 impeachment. She's trying to impeach the witness not
7 with his own prior inconsistent statement but with a
8 statement made in another proceeding by a witness
9 who's not here today and who's not currently sitting
10 on the stand and asking him to take Ms. Hedman's word
11 for it that that was the sworn testimony of the
12 witness and that the statement is correct, none of
13 which the witness is required to do. It is a
14 completely improper question.

15 MS. HEDMAN: Your Honor, may I respond?

16 JUDGE JONES: Yes.

17 MS. HEDMAN: We have a rather difficult
18 situation here in which Mr. Frame got into this
19 proceeding at the rebuttal stage, and since the
20 company gets surrebuttal and we do not, Mr. Rose did
21 not have an opportunity to reply to this issue and
22 did discuss it on the stand and in his prefiled

1 testimony.

2 The prefiled testimony is solely for
3 the ComEd docket. The discussion on the stand went
4 to both dockets.

5 I'm simply trying to put this issue to
6 rest. There's been an allegation that my witness,
7 the People's witness, took a particular position.
8 I'm simply trying to clarify the record and make it
9 clear that he did not take that position. In fact,
10 he disavowed it.

11 JUDGE JONES: Can you give me the citation?

12 MS. HEDMAN: The citation in his prefiled
13 testimony is Exhibit 5 on Page 12, Lines 16 through
14 19.

15 JUDGE JONES: Is that the testimony that you're
16 referring to in your question?

17 MS. HEDMAN: That's Dr. Rose's testimony.

18 JUDGE JONES: But the testimony that you're
19 asking the witness about that is the subject of the
20 objection, are you asking him about something from
21 the other docket?

22 MS. HEDMAN: I'm asking him whether he would be

1 surprised that Dr. Rose made that statement.

2 JUDGE JONES: Do you have a citation to that

3 statement in the other docket?

4 MS. HEDMAN: The statement appears in Exhibit 5

5 at Page 12, 16 through 19, AG Exhibit 5.

6 JUDGE JONES: In which docket?

7 MS. HEDMAN: 05-0159. It's Dr. Rose's rebuttal

8 in that docket.

9 JUDGE JONES: And is that the passage of

10 testimony that you're asking the witness about?

11 MS. HEDMAN: Yes, whether he would be surprised

12 he took that position.

13 JUDGE JONES: Does the witness have a copy of

14 that testimony there somewhere?

15 THE WITNESS: I do not.

16 MS. HEDMAN: May I approach the witness?

17 JUDGE JONES: Go ahead.

18 Q. BY MS. HEDMAN: Mr. Frame, I'm showing you

19 a copy of Dr. Rose's sworn testimony that has been

20 admitted in the companion ComEd docket which is

21 05-0159.

22 I wonder if you could --

1 MR. FLYNN: Judge, I'm sorry. Have you
2 ruled -- did you overrule the objection?

3 JUDGE JONES: Well, there's not really been a
4 ruling on it. This is sort of an attempt to pinpoint
5 where that testimony is exactly and make sure the
6 witness has it available if we get to that point so I
7 think...

8 Is that what you're asking him about
9 now just to kind of get to your question or were you
10 asking him something else?

11 MS. HEDMAN: I was going to ask him to read
12 that so we establish that, yes, it is there, and then
13 I was going to ask him in light of his testimony
14 whether he would be surprised by that statement.

15 JUDGE JONES: All right. So you're going to
16 ask him to read the testimony that's the subject of
17 the question right now?

18 MS. HEDMAN: Yes.

19 JUDGE JONES: So that's sort of the next step
20 in what you're hoping to do?

21 MS. HEDMAN: Yes.

22 JUDGE JONES: All right.

1 Mr. Flynn, any further argument beyond
2 what you've stated?

3 MR. FLYNN: No. I assume what is happening is
4 that the question has been withdrawn, and we're now
5 moving through a foundation, and we may arrive a back
6 at the same question.

7 JUDGE JONES: But it sounds as though the Q and
8 A that was the subject of the question is about to be
9 read into the record in some manner.

10 MR. FLYNN: I didn't understand --

11 JUDGE JONES: Is that right or did I
12 misunderstand that?

13 MR. FLYNN: I didn't understand counsel to ask
14 him to read it outloud. I thought she asked him to
15 read it.

16 JUDGE JONES: Oh, you're asking him to read it
17 to himself?

18 MS. HEDMAN: I actually did intend to have him
19 read it outloud.

20 MR. FLYNN: Well, then I'll object to that. We
21 haven't had that specific question.

22 JUDGE JONES: Same objection?

1 MR. FLYNN: Yes.

2 JUDGE JONES: Same response?

3 MS. HEDMAN: Yes.

4 JUDGE JONES: We have kind of an unusual
5 situation here. I'm not sure I've really seen this
6 specific situation come up like it has at this point,
7 but I will note for the record that this same
8 witness -- see if I can find the reference here --
9 Page 15 of his rebuttal starting on Line 327
10 discusses rebuttal testimony of Dr. Hieronymus in
11 Docket 05-0159.

12 So I don't know if we have what's
13 sauce for the goose argument here or not but I see
14 this witness himself has referred to Dr. Hieronymus's
15 testimony, and I'm not saying it's the very same
16 testimony that he's being asked about here but there
17 is a cross-reference to the testimony presented by
18 witness Hieronymus in Docket 05-0159.

19 I guess my point is we have kind of an
20 unusual situation here. Whether it's appropriate to
21 allow some leeway to counsel under the circumstances
22 is a good question, but I'd like to hear from

1 Mr. Flynn regarding the reference on Page 15 of this
2 witness's testimony and how that's different from
3 what counsel is attempting to do here. That's my
4 question.

5 MR. FLYNN: It's different because this was
6 information that the witness provided in the course
7 of the proceeding when there was an opportunity to
8 take discovery of it. We all knew it was in the
9 case. The AG had an opportunity to respond to the
10 relevance of the data and proper use of it.

11 What we've got now is a situation
12 where we're at hearing. Dr. Rose has come and gone,
13 and counsel is attempting to present a statement made
14 by Dr. Rose elsewhere to impeach or undercut the
15 statement that Mr. Frame made about Dr. Rose's
16 testimony in this proceeding.

17 JUDGE JONES: All right. Any response?

18 MS. HEDMAN: Your Honor, the alternative is
19 that we can sit here till the cows come home while
20 Mr. Frame looks for a statement in Dr. Rose's
21 testimony that expresses that he prefers regulated
22 outcomes over market outcomes.

1 JUDGE JONES: Well, Ms. Hedman, could you read
2 into the record the portion of Dr. Rose's testimony
3 that you're asking this witness about?

4 Now, reading this into the record as
5 I'm sure everyone in the room knows does not get it
6 into the evidentiary record in this docket but it
7 gets the testimony in question stated outloud so
8 everyone can hear what it is.

9 MS. HEDMAN: Thank you, Your Honor.

10 The testimony that I'm asking about
11 appears on Page 12 of Dr. Rose's prefiled testimony,
12 prefiled rebuttal testimony, AG Exhibit 5.0 in Docket
13 No. 05-0159, and he states as follows:

14 "Nothing in my testimony states or
15 implies that Illinois' original decision to move away
16 from traditional rate-based regulation was a mistake.
17 On the contrary, I have written about the limitations
18 and inefficiencies of rate-based regulation in the
19 past."

20 And I'm simply asking the witness
21 whether he would be surprised that Dr. Rose made that
22 statement.

1 JUDGE JONES: So that's your question?

2 MS. HEDMAN: Yes.

3 JUDGE JONES: Well, I'm going to allow the
4 question. I understand the objection. I'm going to
5 give counsel some leeway to ask the question.

6 THE WITNESS: Yes.

7 Q. BY MS. HEDMAN: Can you cite a specific
8 passage in Dr. Rose's testimony in this docket in
9 which he takes the position that outcomes under cost
10 of service regulation will always be preferable to
11 market determined outcomes?

12 JUDGE JONES: This docket being the Ameren
13 docket?

14 MS. HEDMAN: The Ameren docket.

15 JUDGE JONES: Thank you.

16 THE WITNESS: This is a different question.
17 It's not the question that you asked before that I
18 just responded yes to.

19 MS. HEDMAN: No. It's the question I asked you
20 first, the very first question I asked you when I
21 began questioning.

22 THE WITNESS: Okay. I would suggest that --

1 it's my view that his testimony is consistent with
2 the view that it was a mistake.

3 That's not to say I can find a passage
4 where I could quote Dr. Rose as saying it is or it
5 was a mistake, but in this topic area that we're
6 talking about now that you referred me to on Page 9
7 of my surrebuttal testimony, this addresses some
8 price comparisons that he has made that I believe are
9 biased comprise comparisons, and I can't imagine why
10 he would be putting these biased prices in there that
11 ignore fuel cost changes without having that view.

12 MS. HEDMAN: Your Honor, could you please ask
13 the witness to address my question?

14 I will get to questions about his
15 testimony on prices, fuel prices in due course.

16 JUDGE JONES: Well, let's hear the next
17 question and we'll go from there.

18 But I would just state we like to
19 encourage all witnesses to answer the questions that
20 are asked, not some different question; not
21 necessarily limit witnesses to yes or no answers even
22 if questioning counsel would like that sometimes. It

1 depends on the question, but there is one given, and
2 that is witnesses should answer the questions that
3 are asked and not some different question.

4 Q. BY MS. HEDMAN: Mr. Frame, since you're so
5 anxious to talk about fuel prices, let's move on Page
6 9 of your testimony to the sentence right after --

7 MR. FLYNN: Which testimony? I'm sorry.

8 MS. HEDMAN: His surrebuttal testimony.

9 MR. FLYNN: Thank you.

10 Q. BY MS. HEDMAN: The lines aren't numbered,
11 but I'm referring to the sentence after the one we
12 just discussed in which you speculate about West
13 Virginia's electricity rates, and then on Page 10,
14 you characterize Dr. Rose's analysis of the West
15 Virginia rates in his rebuttal testimony as a
16 "disingenuous price comparison that ignores the
17 recent fuel price increases," is that correct?

18 A. The word disingenuous was intended to apply
19 to the fuel, the retail rate comparisons that were
20 contained in Dr. Rose's testimony, in his direct
21 testimony, not the West Virginia example.

22 Q. The only example that you --

1 A. If you'll -- excuse me. I was trying to
2 find something. If you'll look --

3 Q. Actually, there's no question pending.

4 A. I had not finished my prior answer.

5 JUDGE JONES: It's deemed finished. You'll
6 have the opportunity on redirect.

7 Q. BY MS. HEDMAN: This is the only specific
8 reference on Page 9 and 10 of your surrebuttal
9 testimony to rates in West Virginia?

10 A. West Virginia is the only jurisdiction that
11 appears in the response.

12 Q. And --

13 A. Am I done? I wish to --

14 Q. You've answered my question.

15 JUDGE JONES: Well, I heard that question. You
16 may finish your answer.

17 If there's a problem with some portion
18 of the answer, you may make a motion to strike it.

19 Go ahead and finish your answer.

20 THE WITNESS: The retail price comparisons that
21 I'm referring to in that part are those that Dr. Rose
22 had provided in his testimony to which I was

1 responding in my rebuttal.

2 Q. BY MS. HEDMAN: And you make a similar
3 statement, don't you, on Page 19 of your rebuttal
4 testimony on Lines 415 through 419? You again use
5 the word disingenuous, and don't you state that it is
6 disingenuous of Dr. Rose to present the price
7 comparisons that he has and to attempt to suggest the
8 use of comprehensive procurement processes such as
9 the proposed CP-A might result in higher retail
10 electricity prices without referring to these
11 dramatic fuel increases.

12 You say that in your rebuttal
13 testimony too, don't you?

14 A. You've read it almost precisely correct.
15 You didn't read it precisely correct, but I do say
16 it, and it's the same price comparisons of Dr. Rose
17 that I'm talking about there that are enumerated in
18 footnote 6 of Respondent's Exhibit 13.0 that I was
19 referring to in Respondent's Exhibit 20.0.

20 Q. And did Dr. Rose respond to your suggestion
21 that he was offering "disingenuous price comparisons"
22 in his rebuttal testimony by stating that it is not

1 clear to me what is disingenuous about providing
2 facts about prices in other states that are now using
3 the wholesale market to procure electricity and
4 determine electricity prices for retail customers?

5 Did he refine that matter on Page 8,
6 Lines 19 through 21 of his rebuttal testimony?

7 A. He does respond on Page 8 of his rebuttal
8 testimony.

9 Q. All right. Now, moving on to Pages 5 to 7
10 of your surrebuttal testimony, on those pages would
11 it be fair to say that you raise questions about the
12 "relevant geographic area to be used in a study of
13 market concentration and competitiveness"?

14 A. The response that you're referring to is
15 responding to my interpretation of Dr. Rose's
16 testimony concerning whether Illinois or some portion
17 of it was a relevant geographic market for purposes
18 of this proceeding.

19 Q. And in the middle of that page, you point
20 out that Dr. Rose didn't recommend the use of any
21 particular geographic market in a study to assess the
22 potential for or the exercise of market power in

1 connection with the proposed auction, isn't that
2 right?

3 A. That's not quite what I've said here .

4 What I've said is that it's helpful
5 that Dr. Rose has now clarified his testimony.

6 Q. In fact --

7 A. If you look above, he uses expressions like
8 Illinois markets, and the MISO portion of Illinois as
9 if they were relevant markets, and from that, I had
10 inferred that he believed that they were, and that's
11 what I stated in Exhibit 13.0.

12 Dr. Rose said, no, you've
13 misinterpreted what I've said.

14 Q. In fact, doesn't his testimony recommend
15 determination of the appropriate geographic market as
16 the first step in the Commission study of the
17 competitiveness of the wholesale market that he
18 recommends in his direct testimony?

19 A. His testimony says what it says.

20 If you'll point me to a particular
21 spot, I could confirm your statement.

22 Q. Well, let's look at his rebuttal on Pages 2

1 to 4.

2 On Page 2 at Line 19, doesn't Dr. Rose
3 clearly state that his use of the phrase Illinois
4 markets is simply a reference to the wholesale market
5 that includes Illinois, not a claim that Illinois is
6 the market?

7 A. He does say that, and I say that it's
8 helpful that he's now clarified that.

9 Q. And doesn't he also say on Page 4 of his
10 testimony, Lines 19 through 21, that -- oh, I'm
11 sorry. Strike that.

12 Mr. Frame, how do you define market
13 power?

14 A. I would define market power as the ability
15 profitably to raise prices above competitive levels
16 by a significant amount for a non-transitory time
17 period.

18 Q. And can market power occur in the absence
19 of a transmission constraint?

20 A. There could be situations where market
21 power could occur in the absence of a transmission
22 constraint. I'm not sure they would be particularly

1 frequent or relevant to this case.

2 The example I'm thinking of would be
3 say an island, Hawaii, and if one generator owned all
4 of the generation capacity in Hawaii and was
5 unencumbered by regulation or forward contract
6 obligations and the customers had no choice but to
7 buy from that supplier, then it probably would have
8 market power.

9 I'm not sure I can go from that analog
10 to this case however.

11 Q. So you wouldn't consider the Pacific Ocean
12 surrounding Hawaii a transmission constraint?

13 A. If you wanted to look at it that way, then
14 it would be a transmission constraint in that sense,
15 and then that example wouldn't apply.

16 Q. Mr. Frame, how do you define a competitive
17 market?

18 A. I like to have an outcome-oriented
19 definition so that the pricing and quantity outcomes
20 are consistent with those you would expect from a
21 competitive arena so we don't have the suppliers
22 making too much money. We have the prices about

1 where they should be. We have freedom of entry and
2 freedom of exit.

3 Probably structural considerations
4 play in meaning you would probably not want one
5 supplier to have too much of the capacity available
6 to serve the market, but indeed that certainly is not
7 an absolute. It can be in some cases but if the
8 supplier's capacity is under contract or there's
9 freedom of entry from the outside, then that would
10 not be a concern.

11 Q. Thank you.

12 Now, on your CV which has been marked
13 as Exhibit 13.1 --

14 A. Excuse me just a moment. I didn't bring a
15 copy of 13.1.

16 Q. I'm not going to ask him -- well, I am
17 going to ask him one question. I can give him mine.

18 A. I don't know if this is a typo or what.
19 This actually has 15.1 on it but I think it probably
20 should be 13.1.

21 Q. Well --

22 A. It's actually got both 15.1 and 13.1 on it.

1 I apologize.

2 JUDGE JONES: It's 13.1.

3 Q. At any rate, the document you have in front
4 of you is your CV, is that correct?

5 A. It is.

6 Q. Does your CV acknowledge that you filed
7 expert testimony on market power issues in the
8 Exelon/PSEG merger case on behalf of PSEG?

9 A. It does list such testimony. It lists two
10 pieces of testimony. I think there's actually been a
11 third piece that was filed since the time of this
12 version of the CV.

13 Q. And for purposes of your testimony in that
14 FERC docket, did you analyze the effective, the
15 proposed merger on competition across three
16 geographic markets affected by the merger?

17 A. There were three markets that were
18 analyzed, that's correct.

19 Q. And in that case, you didn't analyze the
20 competitiveness in merger impacts on western PJM
21 markets either before or after the merger, did you?

22 A. That's correct.

1 Q. And you haven't conducted any such analysis
2 in this case either, have you?

3 A. I have not.

4 MS. HEDMAN: I think that completes my
5 questioning. Thank you.

6 JUDGE JONES: Mr. Rosen, looks like you're up.

7 MR. ROSEN: Mr. Frame, my name is Larry Rosen,
8 and I'm with the Citizens Utility Board.

9 THE WITNESS: Good morning.

10 MR. ROSEN: Good morning.

11 CROSS-EXAMINATION

12 BY MR. ROSEN:

13 Q. There was a question asked of you
14 concerning opportunity cost, and I think the question
15 was whether a company, a generator of power would be
16 willing to sell its power below cost, and I think
17 your answer was probably not. Because there are
18 opportunity costs involved, they would rather go to
19 the MISO market for instance and sell on the spot
20 market.

21 Is that sort of what you said? And if
22 I didn't say it correctly, you're certainly free to

1 tell me what you said.

2 A. That's not what I said.

3 Q. Okay. Tell me what you said.

4 A. I think the question concerned sales not
5 below cost as your question just did but sales below
6 the market price.

7 Q. Oh, I'm sorry. You're right.

8 A. And it was a generic response that didn't
9 have anything to do with MISO or not.

10 Q. All right. Well, let's focus in on that.

11 In terms of electrical power
12 generators, when you say that they would not be
13 willing to sell below market prices or might not be
14 willing to sell below market prices, what do you mean
15 by market prices?

16 A. The price they can get from the
17 alternative.

18 Q. And what's the alternative?

19 A. What's the situation? I need to have the
20 facts.

21 Q. Well, let's say that an affiliate company
22 might be willing to sell to one of its affiliates in

1 a long-term contract a fixed price that appears to be
2 below market price.

3 A. Your example concerns a transaction that is
4 entirely within a single corporate entity?

5 Q. Yes, the affiliated companies.

6 A. I don't know that the example would play in
7 that regard.

8 Q. Why not?

9 A. I think it would be the question in which
10 the corporate entity including all of the affiliates
11 would be willing to sell to the outside world.

12 Q. Okay. Well, is there anything that
13 prohibits an affiliate from selling to another
14 affiliate?

15 A. Is that the end of the question?

16 Q. Yeah.

17 A. Are there things that prohibit an affiliate
18 from selling to another affiliate?

19 Q. Yes.

20 A. There are --

21 MR. FLYNN: I'm sorry. Are we talking about
22 electricity?

1 MR. ROSEN: Yeah, I'm talking about
2 electricity. Let's just assume we're talking about
3 electricity.

4 THE WITNESS: An affiliate selling to another
5 affiliate would have to certainly at the very least
6 comply with FERC rules concerning that transaction,
7 and indeed, those rules have become somewhat more
8 restrictive over time.

9 Q. Okay. What are those rules?

10 A. Well, I don't know that they're codified in
11 that example in that precise fashion.

12 You have to meet a -- there's an Edgar
13 standard, so there has to be a market test for that
14 output.

15 I think in the context of an affiliate
16 selling capacity to another affiliate, it would
17 actually have to go through an RFP process under the
18 rules as they exist today, a transparent RFP process.

19 Q. Well, when you talk about market prices --

20 A. And that would be if it was a market deal
21 or a cost-based deal.

22 Q. Well, when you talk about market prices,

1 when you use the term market prices with respect to
2 the wholesale electrical industry, what are you
3 referring to?

4 A. I don't know if there's a subtlety to that
5 that I'm not appreciating.

6 Q. It's a simple question.

7 A. It could be the price in a formal spot
8 market if that was the context of the question.

9 It could be the price at a liquidly
10 traded hub if that was the context of the question.

11 It could be the best deal you could
12 get in a bilateral arrangement if that was the
13 context.

14 Q. And in bilateral contracts in terms of a
15 fixed price over a period of time, if someone said I
16 want to make sure that that bilateral contract was a
17 reflection of market prices, what market prices would
18 you use to determine whether the bilateral contract
19 price is a reflection of market price?

20 A. This is a long-term transaction.

21 Q. Say either one year, three-year or
22 five-year which are some of the durations that are

1 going to be part of the auction process here.

2 A. Well, basically you have two alternatives.
3 You can try to do some kind of modeling exercise to
4 determine the price or you can use a bidding process,
5 and the bidding process will give you that market
6 price. That is the outcome.

7 Q. Well, do you ever consult with companies
8 like Ameren other than Ameren that have to acquire
9 their electrical needs in the wholesale market?

10 A. I may have done a small amount of such
11 work. It's certainly not a significant part of what
12 I've done.

13 Q. Is this the first time you've represented a
14 company like Ameren here who has to go out and
15 acquire electricity in the wholesale market?

16 A. No. I've worked in bidding systems on
17 prior occasions.

18 Q. And who did you work for in these bidding
19 systems?

20 A. I can think of five examples: TransAlta,
21 Public Service Electric and Gas Company, Electricite'
22 de France, Kansai Electric Power Company, and Florida

1 Power Corp now known as Progress Energy Florida.

2 Q. And were these companies like Ameren; that
3 is, they had an obligation to sell on the retail
4 level but they didn't own their own generation.

5 A. There might have been one situation that
6 would closely parallel.

7 Q. Which situation would that be?

8 A. Some of the work that I've done with PSEG
9 would have fallen in that category.

10 Q. Did you consult with them on the issue of
11 how they would acquire electricity on the wholesale
12 market?

13 A. The consulting that I did was concerning
14 market power considerations.

15 Q. Could you keep your voice up a little bit?
16 I'm having trouble hearing you.

17 A. I'll try to do better.

18 The work that I did in that context
19 concerned market power considerations.

20 Q. Okay. So again, is this the first time
21 that you've ever consulted with a company like Ameren
22 that's required to sell electricity on a retail level

1 but doesn't own its own generation?

2 A. No.

3 Q. Okay. When did you do it on any other
4 occasion?

5 A. Again, the work with Public Service
6 Electric and Gas.

7 Q. Okay. And did they own their own
8 generation?

9 A. Public Service Electric -- the corporate
10 structure is you have the company at the top owns
11 subsidiaries. One of the subsidiaries owns
12 generation, a subsidiary called PSEG Power.

13 Another subsidiary, Public Service
14 Electric and Gas, is an LSE, load serving entity.
15 Public Service Electric and Gas, the load serving
16 entity does not own generation capacity. PSEG power
17 does own generation capacity but doesn't have a load
18 obligation.

19 Q. But in that situation, you're only asking
20 about what the markets were like in those areas
21 rather than being asked what's the best way to
22 acquire the power we need to sell on the retail

1 level.

2 Is that a fair statement?

3 A. I did not consult on that latter topic.

4 I'd prefer to not to say what I did talk about, what
5 I did consult on.

6 Q. But you certainly didn't consult with them
7 on that latter part of my question?

8 A. I did not.

9 Q. And you've not really been hired here to
10 give an opinion about the type of process used to
11 acquire electricity on the wholesale level that needs
12 to be sold at the retail level. You're just here to
13 talk about the markets?

14 A. My testimony is what it is, and I believe
15 it addresses what I was asked to do.

16 Q. And what were you asked to do?

17 A. Address the competitive -- well, most
18 directly respond to the testimony of the witnesses
19 that addressed market power and competitive concerns.

20 Q. Okay. You weren't asked to give an opinion
21 about whether an auction process is the best process
22 to utilize in acquiring wholesale electricity to sell

1 on the retail level, were you?

2 A. I was not asked to do that.

3 Q. Now, you we know about the MISO markets and
4 the PJM markets, is that correct? Those are spot
5 markets where someone can go on a given day and
6 acquire electricity.

7 Is that a fair representation of what
8 those markets are?

9 A. Well, they have those characteristics. I
10 think PJM probably runs other markets as well and
11 their FTRs as well.

12 Q. They run a day ahead market.

13 A. Well, it's not just a day ahead. It's PJM
14 and its capacity markets and ancillary services.

15 Q. But one of the things those markets are
16 designed to do though is to provide an availability
17 of electricity that can be purchased that day and
18 sold to others, isn't that correct?

19 A. They allow one to purchase electricity in
20 the day ahead in the realtime hourly markets.

21 Q. Okay. And what are the some of the types
22 of suppliers that provide electricity under the PJM

1 markets or the MISO markets?

2 A. Types of suppliers?

3 Q. Yes.

4 A. These would be entities that own electric

5 generating capacity.

6 Q. Right.

7 A. Entities that own electric generating

8 capacity.

9 Q. Okay. And how is some of that electricity

10 produced by these suppliers?

11 A. I don't know if this is a trick question.

12 They run their generators.

13 Q. No, no.

14 A. They run their generators. They burn fuel

15 if they're fossil units.

16 Q. Okay. What other types?

17 A. Excuse me?

18 Q. Well you talked about fossil fuels. What

19 other types?

20 A. Well, if you want to have that kind of

21 breakdown, we've got nuclear units. We've got hydro

22 units. We've got coal units, gas units, oil units,

1 different types of gas units.

2 Q. As to those specific types of units that
3 you described, is any particular type of -- well, let
4 me ask it differently.

5 Do you have an opinion on what drives
6 the prices on the PJM spot markets and the MISO spot
7 markets -- companies that produce electricity through
8 nuclear reactors, companies that produce electricity
9 by hydro, companies that produce electricity by
10 fossil fuel, or companies that produce electricity by
11 natural gas?

12 A. What drives the price for each of those
13 companies?

14 Q. Yes. Who are the price setters, do you
15 know?

16 A. There's a supply curve and then there's a
17 demand level, and sometimes in low demand times, the
18 coal units are on the margin, and at higher demand
19 times, the coal units are not on the margin.

20 Q. Who's on the margin?

21 A. Units with higher costs.

22 Q. What companies have higher costs?

1 A. Well, many of these companies have low cost
2 units and high cost units so they have a fleet of
3 generators with different costs and other
4 characteristics.

5 Q. When you use the term high costs, what do
6 you mean?

7 A. Things that are above coal on the supply
8 curve.

9 Q. Okay. And what's above coal?

10 A. Generally above coal would be natural
11 gas-fired units, oil-fired units. You would
12 certainly use pump storage hydro in that fashion.

13 Q. What's below coal?

14 A. Nuclear. You could consider certain must
15 take QF contracts as below coal. You could consider
16 run of river hydro as below coal.

17 Q. But nuclear is definitely below coal in
18 your opinion?

19 A. Yes, it is.

20 JUDGE JONES: How much more do you have,
21 Mr. Rosen?

22 MR. ROSEN: About five minutes.

1 Q. Now, you talk about the MISO markets.

2 Have you done any quantitative
3 analysis of the competitiveness of the MISO market
4 from September 2006 through 2011?

5 A. I guess I'm not certain what you mean by a
6 quantitative analysis of that market for that period.

7 Certainly I have looked at, in the
8 past I've looked at the concentration of generation
9 ownership in that area for different time periods,
10 and, you know, those things don't really flit about
11 too much. They move more like glaciers, so in that
12 sense I have.

13 If it's some other type of analysis
14 like what will be the price at a particular LMP in
15 2010, I haven't done that analysis, particular bus.

16 Q. Have you tried to do any kind of
17 quantitative analysis from the period of
18 September 2006 through 2011 as to whether or not any
19 particular company might be able to exercise market
20 power?

21 A. The things that I've looked at suggest that
22 that will not be the case.

1 Q. Have you done such a quantitative analysis?

2 A. Define quantitative analysis.

3 Q. Crunched numbers, looked at numbers and try
4 to come up with some quantitative analysis of whether
5 you think anyone is capable of exercising market
6 power from September 2006 through 2011 rather than
7 what we've heard once here as qualitative intuitive
8 type of analysis, an actual quantitative analysis?

9 A. I think that looking at the structural, the
10 concentration of generation in MISO does qualify as a
11 quantitative analysis even if done on a historical
12 basis.

13 Q. Have you done it on a basis though looking
14 forward September 2006 through 2011?

15 A. My answer is the same as I gave before.

16 Q. Is that yes or no?

17 A. My answer is that the historical analysis
18 probably shed a great deal of light on that. It's
19 not precisely the same because obviously we don't
20 know who's going to own, what transactions are going
21 to occur between now and then. It's sort of like an
22 impossible hurdle.

1 Q. I'm sorry. I'm still having trouble
2 hearing you.

3 A. It's sort of an impossible hurdle that
4 you're setting up.

5 Q. I see.

6 So you're stating no one can state for
7 certain how competitive the markets are going to be
8 in the MISO area from September 2006 through 2011?

9 A. I think that as a practical matter, any
10 statement about market power in the future is always
11 a probabilistic statement.

12 We can say with certainty that the sun
13 will rise in the east tomorrow, but there's not so
14 much else that we can say with absolute certainty.

15 However, we can look at the things
16 that we know about and make our inferences.

17 Q. You've answered my question.

18 A. Good.

19 Q. The next question for you, have you done
20 any quantitative analysis of the PJM markets from
21 September 2006 through 2011?

22 MR. FLYNN: Objection. Relevance.

1 MR. ROSEN: Well, he does refer to the PJM
2 markets in his testimony. One thing he talks about
3 is PJM-MISO seam. He makes comparison between PJM
4 and MISO.

5 MR. FLYNN: I withdraw the objection.

6 MR. ROSEN: Thank you.

7 THE WITNESS: My answer would be the same as
8 with respect to the MISO.

9 Q. Which is why I think we've gotten a bunch
10 of answers to the questions.

11 Have you done any quantitative
12 analysis of the PJM markets from September 2006
13 through 2011 in terms of how competitive overall that
14 market will be?

15 A. Sure. I've done several concentration
16 analyses of that market using current data or data as
17 of 2005.

18 I think that that data provides an
19 excellent prospect of telling you what's going to
20 happen in the near term in the future.

21 Q. Okay. Did you provide that information
22 here?

1 A. No.

2 Q. All right. Did you attach it to exhibits
3 to any of your testimony?

4 A. In this proceeding?

5 Q. Yeah, in this proceeding.

6 A. No.

7 Q. Do you refer to it in any of your
8 testimony?

9 A. It's certainly listed in the exhibit, the
10 resume.

11 Q. No, I didn't ask that.

12 Have you referred to it specifically
13 in your testimony?

14 A. I don't know that I have. I don't believe
15 so.

16 Q. Can you say for certain from September 2006
17 to 2011 that any company within the PJM markets
18 cannot exercise market power?

19 A. My answer is going to be the same that I
20 gave before. I can't say very much with certainty.
21 I can say it with a high degree of comfort and
22 probability.

1 Q. Were you involved -- do you know what
2 happened in California with respect to some of the
3 gaming of the system that took place?

4 A. I have some knowledge of California.

5 Q. Okay. Why don't you tell us about what
6 happened.

7 A. Just like that?

8 Q. Yeah.

9 A. I'll give you some salient facts.

10 There were some tremendous spike
11 rises, price spikes. Most people attribute those to
12 a combination of events sometimes referred to as a
13 perfect storm.

14 Severe drought in the Pacific
15 Northwest. California relies on energy from the
16 Pacific Northwest during certain time periods.

17 Increased demand over what had been
18 expected, lack of construction of new generating
19 capacity, some, and what some would have said at the
20 time and just about everybody would say with 2020
21 hindsight, some very poorly designed market rules
22 that basically prohibited the type of transaction

1 that the Ameren Companies wish to enter into now.

2 So the confluence of all of these
3 events combined with some hot summer weather, but it
4 wasn't just summer because it extended into the fall,
5 and some outages at critical times produced some
6 very, very high prices.

7 Q. Didn't you leave something out though?
8 Wasn't there something that took place between Enron,
9 Straiters, and some companies that supplied power?

10 A. I don't understand the question.

11 Q. Well, wouldn't you --

12 A. Ameren was a market participant. I'm
13 talking about supply demand fundamentals that would
14 have raised the price notwithstanding what Enron or
15 any other participant might have done.

16 Q. Well, wasn't there some concern that Enron
17 engaged in some illegal behavior that had an impact
18 on wholesale market prices in California?

19 A. There's no doubt concern about that. Some
20 of it is consistent with supply demand fundamentals,
21 and some of it is the exploitation of imperfect
22 market worlds.

1 Q. What do you know about what Enron is
2 accused of doing?

3 JUDGE JONES: How much more do you have,
4 Mr. Rosen?

5 MR. ROSEN: One minute.

6 A. There were a series of transactions that
7 were undertaken to avoid price gaps. That would be
8 an example, but that's one that, that's the one that
9 goes under the guise of ricochet trading. You're
10 price capped in California so if you're -- and I
11 don't remember the exact number. If you can only
12 sell at \$250 in California but you're really dealing
13 with not a California market but a west-wide market
14 because the market is much broader than California,
15 you don't sell at 250 in California. You sell at 400
16 outside, and then it gets brought back into
17 California by someone else.

18 Q. And that was considered gaming the system,
19 wasn't it?

20 A. That was considered gaming of the system,
21 but I think you have to put that into a different
22 category than perhaps some of the other things

1 because that is basically getting the market price
2 right in California, and I have right in quotes there
3 because of the other things going on.

4 MR. ROSEN: I have nothing further.

5 JUDGE JONES: Thank you, Mr. Rosen.

6 Is there redirect, Mr. Flynn?

7 MR. FLYNN: Yes, there is, Judge. Just a few
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. FLYNN:

11 Q. Mr. Frame, Ms. Hedman asked you if you
12 would be surprised to learn that Dr. Rose had made a
13 particular statement in the companion ComEd document,
14 and I believe you said that you would be.

15 Would you tell us why?

16 A. I think my testimony does not say that
17 Dr. Rose made such statements but would have language
18 to the effect that he may believe or is consistent
19 with, but it's my view that almost the entire thrust
20 of the testimony is complaining about the situation
21 that exists or he believes exists.

22 So we have these fuel prices, these

1 retail price comparisons that are made, and they're
2 all of or almost all of price rises in states that
3 have gone to competition, and so he's saying that
4 prices in 2005 are higher than prices in 2004 or
5 2003.

6 I can't imagine what relevance that is
7 to this proceeding, but it certainly to me seems to
8 be consistent with a view that he believes that some
9 mistake has been made.

10 He talked about the market
11 concentration in Illinois. I don't know why you
12 would talk about the market concentration in Illinois
13 as a general matter since I don't think anybody is
14 claiming that that's a relevant market, but we have
15 some numbers there that he believes are important
16 numbers that show concentration being "too high."

17 I can't imagine what the purpose of
18 that testimony would be other than to support the
19 view that he thinks some mistake has been made.

20 He's also concerned about market
21 power. Well, I think there's a lot of reasons that
22 we can -- a lot of comfort can be given that market

1 power is not going to be a problem in and around the
2 area where the Ameren Companies are going to be
3 buying power.

4 That stated, and some of these we've
5 discussed, that stated, even if market power were a
6 problem, it's got nothing to do with the auction.
7 Market power is there anyway, would be there anyway.
8 I don't think it is, but if it were, it would be
9 there anyway.

10 So I don't understand the relevance of
11 even discussing market power unless there's a view
12 that somehow a mistake has been made and Illinois
13 shouldn't have gone down this path it has gone down.

14 So that's why I'm surprised.

15 Q. Thank you.

16 Mr. Rosen asked you some questions
17 about market prices and opportunity costs, and I'm
18 sure that when I read the transcript, I'll see that
19 he did a very fine job, but I was confused at the
20 time about whether you were talking generically or
21 with respect to electricity, so let me just ask you
22 to clarify it.

1 If CILCO buys power from a generating
2 affiliate below market price, is there an opportunity
3 cost to the generating affiliate?

4 A. Yes.

5 Q. Mr. Rosen also asked you a number of
6 questions regarding PJM and MISO markets and analyses
7 that you've performed and whether you'd performed any
8 analyses specific to a future time period that he
9 defined.

10 Is it your testimony that your
11 historical analyses of the PJM and MISO regions are
12 applicable to the future period he defined?

13 A. By and large I believe they are, yes.

14 Q. All right. And they showed what?

15 A. Market concentration is very low in both
16 regions. There's a surplus in each of these areas.
17 A surplus is very important in a market power
18 investigation. You can calculate statistics on
19 market concentration or market share but if there's a
20 surplus, you can almost throw them out the window
21 because the surplus means that those that own
22 generation are going to be wanting to lay off their

1 product, and they're going to compete down to very
2 low prices.

3 Q. Mr. Rosen also asked you about market
4 participants in MISO, and you talked about generation
5 owners.

6 Are there other participants?

7 A. Oh, well, yes. There's lots of
8 participants.

9 Q. Such as?

10 A. Transmission owners, load serving entities,
11 marketing entities, lots of types of entities.

12 Q. Financial planners?

13 A. Let's see, your question was with respect
14 to participants in MISO. I'm not sure I know.

15 If you're wanting to talk about who
16 might be bidding in the auction --

17 MR. FLYNN: No, my question was about MISO, and
18 I think you answered it. Thank you.

19 That's all the redirect I have.

20 JUDGE JONES: Recross?

21

22

1 Has the affiliate that sold at \$5
2 below cost lost out on an opportunity, not cost, \$5
3 below market. Has that affiliate lost an
4 opportunity?

5 A. The affiliate has lost an opportunity.

6 Now --

7 Q. And what is that opportunity?

8 A. The opportunity to sell it at market, to
9 take less for its output than the market would have
10 allowed it to get.

11 Q. Okay. Now, let's make it specific now to
12 the issues here which are electrical power, both
13 buying electricity and selling electricity at the
14 wholesale level, okay?

15 If there's a sale of power at below
16 market price to an affiliate at the wholesale level,
17 what is the affiliate who's selling the power losing
18 out on? To sell it at market; right?

19 A. Correct.

20 Q. And what's the market? That's my question.
21 What do you define as the market in that situation to
22 determine that he's selling it, could have sold it

1 for 50 but actually sold it for 45?

2 A. The alternative price that it could have
3 reaped.

4 Q. And how does it make a determination of
5 what that alternative price is?

6 A. Well, I'm not sure we can answer this in a
7 vacuum although I do think we went over it before.

8 If it was a spot transaction, I could
9 look to a spot market.

10 If it was a type of strip transaction
11 that's traded in liquid fashion, I could look to a
12 hub price.

13 Q. Okay.

14 A. If it's a long-term transaction, I'm going
15 to have a little more difficulty but I can always, I
16 can do some kind of estimate based upon a modeling
17 process.

18 Q. All right. Let's deal with that situation.
19 It's a long-term contract. That is, the ability of
20 selling it which you've defined it as below market
21 price under a long-term contract, how do you
22 determine whether the fixed price of that contract is

1 below market price?

2 A. Okay. The situation is that the affiliate
3 sells to, one affiliate sells to another on a
4 long-term basis.

5 Q. Yes.

6 A. You're asking how am I going to determine
7 what it could have gotten otherwise.

8 Q. Yes.

9 A. Okay. To the extent we've got organized
10 markets, I can look to those, but the organized
11 markets are not likely to be real helpful in the
12 situation you've outlined which might be a multi-year
13 deal.

14 Q. Okay. And why is that? Why won't the
15 organized markets be helpful?

16 A. The organized markets don't generally cover
17 those transactions.

18 Q. Okay.

19 A. And let's just make it simple. Let's talk
20 about a ten-year deal.

21 Q. A ten-year deal?

22 A. Yeah.

1 Q. Let's talk about a three-year deal.

2 A. Okay. We'll talk about a three-year deal.

3 Okay. Three-year deal.

4 Q. Well, I want to keep it relevant to this
5 proceeding and that's why I use three years versus
6 ten.

7 A. Okay. That's fine.

8 So you can try to do what you can with
9 organized markets but as the length of time
10 increases, the organized markets are going to be less
11 helpful to you there.

12 Q. I'm going to stop you right there.

13 A. I have not finished my answer of course you
14 understand.

15 Q. I know but I just want to make sure we're
16 talking on the same terms.

17 When you say organized markets, what
18 markets are we talking about?

19 MR. FLYNN: Judge, I don't have any problem
20 with the witness interjecting an explanation of what
21 the organized markets are as long as he's then
22 allowed to return and finish the answer that he

1 stated he hadn't finished.

2 MR. ROSEN: Absolutely.

3 THE WITNESS: An organized market could be like
4 a PJM or a MISO day 2 market.

5 You could move off of that to prices
6 at liquid hubs. Whether you wanted to call that an
7 organized market or not, that would depend on your
8 definition of organized market.

9 Once you get beyond that, you could
10 look at comparable transactions but that's always
11 a -- there's problems there because you don't have
12 complete information on all types of transactions.

13 You can go out in the market and
14 solicit, make solicitations and see what the market
15 would provide for you.

16 If your price for the transfer was
17 arrived at as a result of a solicitation process, you
18 would have probably some pretty good comfort that
19 that actually was a market price and the situation
20 you're describing did not transpire.

21 In other cases, if you went to the
22 market for a solicitation just to determine the

1 price, not with some real interest in getting power
2 out of it, you'd be less likely to have faith in the
3 outcome of that process.

4 Ultimately, you can use some kind of
5 modeling process to forecast what you think the
6 equilibrium price levels will be and do a discounted
7 cash flow analysis off of that, perhaps with some
8 kind of option model that takes price spikes into
9 account.

10 Q. And in terms of the modeling when you come
11 up with some sort of formula to arrive at a price on
12 a fixed contract over a long period of time, do the
13 spot markets have any relevancy?

14 A. The spot markets might guide your analysis
15 in the early time periods.

16 JUDGE JONES: How much more recross do you
17 have?

18 MR. ROSEN: One more question.

19 THE WITNESS: As time went out, they would not
20 be as helpful in the analysis.

21 Your question is do they have
22 relevance? Sure. They have relevance. They don't

1 get you there by themselves.

2 Q. Are there advantages for a company that
3 produces power to enter into a long-term contract to
4 sell that power versus selling it on the spot market?

5 A. There are pluses and minuses.

6 Q. What are the pluses?

7 A. That there's a certain certainty of your
8 revenue stream that a lot of investors would find
9 comforting.

10 MR. ROSEN: I hold my promise. That was my
11 last question.

12 JUDGE JONES: Other recross?

13 Ms. Hedman?

14 MS. HEDMAN: Yes.

15 RECROSS-EXAMINATION

16 BY MS. HEDMAN:

17 Q. Mr. Frame, in discussing the calculation of
18 opportunity cost, so far you've focused primarily on
19 market prices.

20 In such a calculation, wouldn't a firm
21 also take into account other factors; say for
22 instance tax implications of a transaction?

1 MR. FLYNN: I'm going to object. This is not
2 recross on the redirect that I did. This is cross on
3 Mr. Rosen's recross of the witness.

4 It was my understanding that cross on
5 cross on is not allowed in this proceeding plus it's
6 beyond the scope of the redirect that I did with
7 respect to the questions that Ms. Hedman posed.

8 JUDGE JONES: Any response?

9 MS. HEDMAN: I concede it's beyond the scope of
10 redirect on the question that I posed, but it's
11 certainly not beyond the scope of redirect that you
12 did with respect to Mr. Rosen's questioning, and I
13 don't think I should be precluded from asking the
14 question.

15 MR. FLYNN: A response if I may, Judge.

16 The question posed to the witness
17 doesn't even purport to address anything that
18 Mr. Frame said on redirect but rather references the
19 discussion that Mr. Frame offered in response to
20 Mr. Rosen, so this is at least one step removed from
21 redirect, and it's cross on cross which again I
22 thought was not permitted in this proceeding.

1 MS. HEDMAN: I'd be willing to rephrase, Your
2 Honor.

3 JUDGE JONES: Go ahead.

4 Q. BY MS. HEDMAN: Mr. Frame, on redirect,
5 Mr. Flynn asked you a question about opportunity
6 cost, is that correct?

7 A. I believe he asked a couple.

8 Q. And in your answer, you discussed
9 references to market prices in determining
10 opportunity cost, is that correct?

11 A. I believe so.

12 Q. And in determining opportunity cost,
13 wouldn't it also be the case that a firm would look
14 not only at market prices but at other factors, other
15 costs; for instance, the tax implications of a
16 transaction?

17 A. I think the company -- I presume we're
18 talking about some kind of longer term transaction --
19 would look at all the financial effects if it pursued
20 one path versus another, and taxes well could be one
21 of those.

22 That's simply not an area in my area

1 of expertise.

2 MS. HEDMAN: Thank you.

3 JUDGE JONES: Other recross?

4 Mr. Rippie?

5 MR. RIPPIE: Absolutely not. Thank you.

6 JUDGE JONES: Mr. Frame, one question.

7 EXAMINATION

8 BY JUDGE JONES:

9 Q. Pages 8 and 9 of your rebuttal testimony,
10 do you have those there?

11 A. I'm there.

12 Q. On Line 179 and again on Line 196, you make
13 reference to the term capacity market.

14 Do you see that reference?

15 A. Yes.

16 Q. What do you mean by the term capacity
17 market in the context which you use it in that
18 portion of your testimony?

19 A. There's a long answer and a short answer,
20 Your Honor. I'm not sure what your electric industry
21 background is. Let me try with the short to medium
22 term answer and see if that works.

1 Electric generators do several things.
2 They provide energy. They provide ancillary services
3 as well, but sometimes we talk about an unbundled
4 capacity product, and usually that is capacity
5 without any of the output. It's just capacity that's
6 there.

7 And entities that have obligations to
8 serve load like the Ameren Companies in this
9 proceeding and like the winners of the auction if
10 this auction process is approved will have to bring
11 to the table so much capacity, and the product will
12 be capacity without energy otherwise known as
13 capacity credits, and so it's that unbundled capacity
14 product that I'm talking about, and it would be a
15 formal market for that.

16 JUDGE JONES: Thank you. You may step down.

17 (Witness excused.)

18 JUDGE JONES: Off the record.

19 (Recess taken.)

20 JUDGE JONES: Back on the record.

21 MR. FLYNN: Judge, our next witness is
22 Mr. Warner Baxter who has not been sworn.

1 (Whereupon the witness was sworn
2 by Judge Jones.)

3 JUDGE JONES: Thank you. Please have a seat.

4 WARNER L. BAXTER

5 called as a witness herein, on behalf of Ameren
6 Companies, having been first duly sworn on his oath,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FLYNN:

10 Q. Sir, would you please state your name for
11 the record?

12 A. My name is Warner L. Baxter.

13 Q. Mr. Baxter, did you prepare and submit
14 direct testimony in this case?

15 A. I did.

16 Q. I refer you to a document previously marked
17 as Respondent's Exhibit 1.0 bearing the caption
18 "Direct Testimony of Warner L. Baxter dated
19 February 28, 2005.

20 Is this a copy of your direct
21 testimony?

22 A. It is.

1 Q. Is it true and correct to the best of your
2 knowledge?

3 A. It is.

4 MR. FLYNN: Judge, at this time I would move
5 for the admission into evidence of Respondent's
6 Exhibit 1.0 which was filed on e-docket on
7 February 28, 2005.

8 JUDGE JONES: Any objections?

9 Let the record show there are not.

10 Respondent's Exhibit 1.0, direct
11 testimony of Mr. Baxter, is admitted into the
12 evidentiary record as filed on e-docket on
13 February 25, 2005.

14 (Whereupon Respondent's Exhibit
15 1.0 was admitted into evidence
16 at this time.)

17 MR. FLYNN: Thank you, Judge.

18 Mr. Baxter is available for
19 cross-examination.

20 JUDGE JONES: It appears there are several
21 parties who do have cross-examination for Mr. Baxter.

22 Who would like to lead off?

1 Ms. Hedman?

2 MS. HEDMAN: Good morning, Mr. Baxter. My name
3 is Susan Hedman, and I'm with the Office of the
4 Attorney General, and I represent the People of the
5 State of Illinois in these proceedings.

6 THE WITNESS: Good morning.

7 MS. HEDMAN: Good morning.

8 CROSS-EXAMINATION

9 BY MS. HEDMAN:

10 Q. Mr. Baxter, on Page 2 of your testimony,
11 you state that you're executive vice president and
12 chief financial officer of the Ameren Corporation, is
13 that correct?

14 A. That's correct.

15 Q. And you also state at Lines 10 through 13
16 that the Ameren Corporation is the parent company of
17 AmerenIP, AmerenCIPS, and AmerenCILCO, is that
18 correct?

19 A. That is correct.

20 Q. Now, AmerenIP and AmerenCIPS and
21 AmerenCILCO are the parties seeking approval to use
22 the proposed auction to procure the price of

1 electricity, is that correct?

2 A. That is correct.

3 Q. And I take it that these three related
4 entities along with AmerenUE are considered operating
5 companies in the Ameren corporate structure, is that
6 correct?

7 A. That's correct.

8 Q. Now, at Lines 22 and 23 on Page 2 of your
9 testimony, you state that your responsibilities
10 include the oversight of the financial, accounting,
11 and regulatory functions of Ameren and its
12 subsidiaries.

13 So just to be clear, I take it that as
14 an executive vice president and chief financial
15 officer of Ameren that your span of control includes
16 all three of the operating companies that are seeking
17 approval of the proposal pending in this proceeding,
18 is that correct?

19 A. It is, as well other Ameren operating
20 companies.

21 Q. And now, is Ameren Corporation also the
22 parent company of three other unregulated

1 subsidiaries, Ameren Energy, Ameren Energy Resources,
2 and Ameren Services?

3 A. Yes, that is correct.

4 Q. And as executive vice president and chief
5 financial officer, your span of control extends to
6 these unregulated subsidiaries as well?

7 A. That is correct.

8 Q. And is the Ameren corporation a registered
9 holding company under PUCA?

10 A. It is.

11 Q. Does the Ameren Corporation actually have
12 any employees?

13 A. Are you referring specifically to the
14 Ameren Corporation as a whole? It has many
15 employees.

16 Q. Does the holding company actually have any
17 employees, do you know?

18 A. I am an officer of Ameren Corporation and I
19 believe of that holding company, so, yes, it could
20 have employees but -- I'll leave my answer there.

21 Q. Now, what about Ameren Services, is that an
22 unregulated subsidiary that provides financial,

1 legal, accounting, and other services to the three
2 regulated Ameren operating companies involved in this
3 proceeding?

4 A. Ms. Hedman, I'm not sure I would
5 characterize Ameren Services as an unregulated
6 company honestly. That's more of a legal
7 determination as to whether it would be considered an
8 unregulated company.

9 It does provide services to the named
10 corporations in this proceeding as well as other
11 corporations under the Ameren umbrella.

12 Q. And is Ameren Energy an unregulated trading
13 and marketing subsidiary?

14 A. Ameren Energy is not unregulated. I'm sure
15 there's regulatory oversight over Ameren Energy as a
16 whole, and it does perform trading and marketing
17 activities as well as risk management functions I
18 believe.

19 Q. Would Ameren Energy be likely to bid in the
20 proposed auction if it were approved?

21 A. It is not clear to me whether Ameren Energy
22 would bid in an auction if it were approved.

1 Q. Is there any reason that Ameren Energy
2 couldn't participate in the auction if it were to
3 decide to do so?

4 A. Well, Ameren Energy as an entity acts as an
5 agent on behalf of Union Electric and Ameren Energy
6 Generating Company, so Ameren Energy as a marketing
7 affiliate again may not ultimately bid.

8 If it bid, it would be doing it on
9 behalf of the generating company or potentially Union
10 Electric, neither of which I'm suggesting for sure
11 would be bidding in the auction process. They could,
12 especially a generating company certainly could.

13 Q. And how about Ameren Energy Resources. I
14 take it that Ameren Energy Resources is an
15 unregulated entity that you and Ameren call an
16 integrated energy commodity company, is that correct?

17 A. In terms of what Ameren calls an integrated
18 energy commodity company, I'm not sure what that
19 references. Perhaps it's in some of our legal
20 filings.

21 I'll submit if that is what's in our
22 legal filings, then I'll stipulate to that, but if

1 you could ask the question again, please. I'm sorry.

2 Q. Well, let me ask it this way.

3 Does Ameren Energy Resources have
4 three subsidiaries, Ameren Energy Marketing, Ameren
5 Energy Generating, and Ameren Energy Fuels and
6 Services?

7 A. I believe that to be correct, Ms. Hedman.

8 Q. And the first of these subsidiaries, Ameren
9 Energy Marketing, has intervened in this proceeding,
10 is that correct?

11 A. I believe that is correct.

12 Q. And does Ameren Energy Marketing sell
13 energy in wholesale and retail markets throughout the
14 Midwest?

15 A. Ameren Energy Marketing does sell on the
16 wholesale level, and I believe they sell some on the
17 retail level as well.

18 Q. And would Ameren Energy Marketing be likely
19 to participate in the proposed auction if it were
20 approved?

21 A. It is possible that they could participate.

22 Q. And what about Ameren Energy Fuels and

1 Services, I believe that your Web site says that this
2 subsidiary provides fuel and energy-related products
3 and services for Ameren and its affiliated operating
4 companies.

5 Is that what this subsidiary does?

6 A. Yes.

7 Q. Now, I understand the reference to fuel,
8 but could you please clarify what type of energy
9 related products and services that this subsidiary
10 provides to Ameren and its affiliated companies?

11 A. It could provide services related to risk
12 management around potentially fuel procurement among
13 other things.

14 Q. And would Ameren Energy Fuels and Services
15 be likely to participate in the proposed auction if
16 it were approved?

17 A. I don't believe it would be likely that
18 they would be participating in the auction.

19 Q. Is there any reason Ameren Energy Fuels and
20 Services couldn't participate in the auction if it
21 were to decide to do so?

22 A. It is not likely because that wouldn't be

1 their primary function to participate in the auction.

2 Q. Now, let's look at Ameren Energy

3 Generating.

4 I take it that this is an unregulated
5 subsidiary that owns approximately 6200 megawatts of
6 generating capacity, is that correct?

7 A. Again, I'll stipulate in terms of how you
8 define unregulated because all of our entities have
9 some form of regulation, but with regard to your
10 reference in terms of 6200 megawatts, that's
11 approximately correct to the best of my knowledge.

12 Q. And that generating capacity includes the
13 generating facilities that used to be owned and
14 operated by AmerenCIPS, is that correct?

15 A. I'm sorry. Could you state the question
16 again, please?

17 Q. The generating capacity that Ameren Energy
18 Generating owns include the generating facilities
19 that used to be owned and operated by AmerenCIPS, is
20 that correct?

21 A. That is correct.

22 Q. Are there five base load coal-fired power

1 plants owned by Ameren Energy Generating Company:
2 Coffeen, Java, Hudsonville, Meredosia and Newton?

3 A. Those operating plants are part of Ameren
4 Energy Generating.

5 Whether they're correctly classified
6 as base load operating plants depends on one's
7 definition.

8 Q. And I gather that AmerenUE also owns a
9 number of large coal-powered plants and one nuclear
10 generating facility in Missouri, is that correct?

11 A. That is correct.

12 Q. And this regulated company owns capacity
13 totaling about 9000 megawatts, is that correct?

14 A. I believe that to be correct.

15 MS. HEDMAN: I'd like to have this marked as AG
16 Cross Exhibit 12.

17 (Whereupon AG Cross Exhibit 12
18 was marked for identification
19 as of this date.)

20 Q. Mr. Baxter, you're looking at a document
21 marked as AG Cross Exhibit 12.

22 Does that document show a list of

1 Ameren's regulated and unregulated generating
2 facilities and show on a map where they're located?

3 A. This document shows a list of the regulated
4 generation facilities and the non-rate-regulated
5 generation facilities listed in back, and it does
6 show a map of the generating plants under those two
7 entities.

8 Q. And is this list correct?

9 A. This is a document that comes from Ameren's
10 corporate facts, and as I review it, I have no reason
11 to believe that it is not accurate.

12 Q. Would Ameren Energy Generating be likely to
13 participate in the proposed auction if it were
14 approved?

15 A. I'm sorry, Ms. Hedman. Could you say that
16 again?

17 Q. Would Ameren Energy Generating, the
18 subsidiary that owns at least the Illinois plants, be
19 likely to participate in the proposed auction if it
20 were approved?

21 A. Again, I don't know if I would characterize
22 it as likely but certainly potentially they could.

1 Whether they do it directly or
2 potentially through Ameren Energy Marketing, that's a
3 possibility as well.

4 Q. So then at the very least, Ameren Energy
5 Marketing Company is likely to participate in the
6 auction. I think we established that, is that
7 correct?

8 A. I think what we established is it is a
9 possibility. Again, I'm not suggesting that it would
10 be likely but it is a possibility.

11 Q. And if they did so, would they use
12 electricity generated by Ameren Generating Company?

13 A. That would be a possibility.

14 Q. And would Ameren Energy Resources, parent
15 of Ameren Energy Marketing, be likely to participate
16 in the proposed auction if it were approved?

17 A. Again, to the extent that Ameren Energy
18 Marketing or one of their subsidiaries would be
19 participating in the auction, then either directly or
20 indirectly, Ameren Energy Resources could therefore
21 participate in the auction as well.

22 Q. Thank you.

1 Now, on Page 3 of your testimony, at
2 Lines 40 to 43, you state that the rates for BGS will
3 reflect the actual cost of power and energy procured
4 by the Ameren Companies as determined by a formula to
5 be approved in this proceeding and certain other
6 costs which would be set by the Commission in a
7 subsequent rate case, is that correct?

8 A. That is what it says.

9 Q. And when you refer to certain other costs
10 which would be set by the Commission in a subsequent
11 rate case, are you referring to the costs of delivery
12 services?

13 A. No. Primipally I think -- certainly
14 delivery services are other costs which will be
15 reflected in a later rate case but also costs
16 associated with the auction process itself. That's
17 generally what the intention was there, but certainly
18 the delivery service rate case would also pick up the
19 other delivery service piece of the cost.

20 Q. Has Ameren filed its delivery services rate
21 case yet?

22 A. We have not.

1 Q. Has Ameren made any estimates of the
2 percentage increase that will be requested in the
3 delivery services rate case?

4 A. In legislative hearings in March, Ameren
5 utility companies in those hearings stated that based
6 upon information at that time that they estimated on
7 average for all of our Illinois utilities and across
8 all customer classes that rates, total rates could
9 rise 10 to 20 percent over current bundled rate
10 levels, and a statement that was made at that time
11 and subsequent thereto is that of that rate increase,
12 50 to 70 percent of that rate increase would be
13 related to power supply costs.

14 So conversely, then 30 to 50 percent
15 of that 10 to 20 percent increase could be related to
16 the delivery of service portion of the rate.

17 Of course, at that time, that was
18 based upon estimates that were available to us at
19 that time and included a number of assumptions
20 associated with ratemaking power supply costs which
21 generally were the power supply costs on or around
22 February of 2005.

1 MS. HEDMAN: I'd like to mark this as AG Cross
2 Exhibit 13, please.

3 (Whereupon AG Cross Exhibit 13
4 was marked for identification
5 as of this date.)

6 Q. Mr. Baxter, you're looking at a document
7 marked as AG Cross Exhibit 13.

8 Is this document an Ameren power point
9 investor presentation dated March 2005?

10 A. It is.

11 Q. And if you turn to Page 11 of this
12 document, does it recite the same information you
13 just testified you presented in a legislative hearing
14 in February?

15 A. It does.

16 Q. And does the third bullet point on this
17 page state that 50 to 70 percent of the rate increase
18 could be attributable to power cost?

19 A. That is correct.

20 Q. And has the Ameren Companies issued any
21 updated estimates of this rate increase?

22 A. We have not.

1 Q. Now, please turn to Page 12 of AG Cross
2 Exhibit 13, a page which is entitled "Post-2006
3 Illinois Generation Impact."

4 Does the first bullet point on this
5 page state that Ameren sells approximately 3,000
6 megawatts of electricity to AmerenCIPS and
7 AmerenCILCO?

8 A. It does.

9 Q. And is that electricity generated by Ameren
10 Energy Generating Company and sold to the Ameren
11 operating companies by Ameren Energy Marketing
12 Company?

13 A. I believe that's correct.

14 Q. Now, turning your attention back to Page
15 12, does this document list the sales price for
16 electricity sales under those contracts to AmerenCIPS
17 at \$38.50 per megawatt hour and AmerenCILCO at \$34
18 per megawatt hour?

19 A. It does.

20 Q. Do you have any reason to believe that
21 these figures are not accurate?

22 A. I do not.

1 Q. Does the last bullet point on Page 12 state
2 that "recent market prices for similar contracts are
3 above affiliate contract prices"?

4 A. Yes, it does.

5 Q. And do you know, is that reference to
6 affiliate contract prices reference to the contracts
7 described in the first bullet point?

8 A. It is.

9 Q. Do you have any reason to disagree with
10 that statement?

11 A. No.

12 Q. Now, I see from your testimony at Lines 25
13 and 26 on Page 2...

14 A. I'm sorry. It's Lines 25 and 26?

15 Q. Actually, it's Lines 22 through 24.
16 Actually, strike that. I'm on Page 3, Lines 25 and
17 26.

18 A. Okay. Yes.

19 Q. Now, I see there that you are the primary
20 company spokesperson in communications with the
21 financial community, is that correct?

22 A. That is correct.

1 Q. So let's turn to Page 4 of AG Cross
2 Exhibit 13. That's the investor presentation March 4
3 2005.

4 It's Page 4 is entitled "Investment
5 Highlights."

6 A. Yes.

7 Q. And is one of the investment highlights the
8 one that's listed under the fourth bullet point, a
9 statement that "nearly 85 percent of the 2004
10 earnings for Ameren came from regulated operations"?

11 A. Yes, it does.

12 Q. Do you have any reason to believe that
13 statement is untrue?

14 A. No.

15 Q. Does the fifth bullet point on this page
16 also state that Ameren is well positioned for the
17 proposed 2006 operating environment?

18 A. Yes, it does.

19 Q. Would you agree with that characterization?

20 A. Yes, I would.

21 Q. Now, turning to the next page of AG Cross
22 Exhibit 13, please take a look at the dividend yields

1 for Ameren which appear on that page.

2 A. I'm sorry. Please, again, that page
3 number.

4 Q. This would be the next page, Page 5.

5 A. Okay. I'm sorry. Thank you.

6 Q. And I'm directing your attention to the
7 dividend yields for Ameren which appear on that page.

8 The title on the page characterizes
9 Ameren's dividend yield as "an industry leading
10 dividend yield," is that correct?

11 A. That's correct.

12 Q. And would you agree with that
13 characterization?

14 A. Yes.

15 Q. And would you characterize the Ameren
16 credit ratings that appear on that page, an A3 from
17 Moody's and an A- from Standard & Poor's, as "strong
18 credit ratings"?

19 A. Yes.

20 Q. Finally, please turn to Page 13 of
21 Exhibit 13.

22 The 2005 earnings per share guidance

1 that appears on that page is \$2.90 to \$3.10, is that
2 right?

3 A. It is. That's per share.

4 MS. HEDMAN: Per share.

5 Would you mark that AG Exhibit 14 I
6 believe.

7 (Whereupon AG Cross Exhibit 14
8 was marked for identification
9 as of this date.)

10 Q. Mr. Baxter, you're now looking at a
11 document that's been marked as AG Cross Exhibit 14.

12 Is this an Ameren press release that
13 was issued on July 28, 2005 entitled "Ameren Report,
14 Second Quarter 2005 Earnings, Increases 2005 Earnings
15 Guidance"?

16 A. Yes, it appears to be.

17 Q. And this document announces that Ameren
18 expects 2005 earnings to be between \$3.00 and 3.20
19 per share up from the previously expected range of
20 2.50 to 3.10 per share, isn't that right?

21 A. I'm sorry, Ms. Hedman. I believe you said
22 \$2.50 to \$3.10 per share.

1 Q. I'm sorry. \$2.90 to \$3.10 per share.

2 A. That's correct.

3 Just to be clear, this earnings per
4 share guidance now says our earnings guidance is now
5 \$3 per share to \$2.20 per share compared to \$2.90 per
6 share and \$3.10 per share.

7 Q. Yes. Thank you for clarifying that.

8 Now, according to the press release, I
9 believe that Ameren CEO Gary Greenwater is quoted as
10 attributing the increased earnings in the second
11 quarter of 2005 to "stronger interchange power sales
12 margins."

13 Do you see that in the third paragraph
14 of the press release?

15 A. I see that, and he cites a number of other
16 factors as well.

17 Q. Do you have any reason to disagree with
18 that statement or the explanatory information that's
19 offered later in the press release, particularly that
20 "interchange revenues were up 66 million as sales
21 increased by 39 percent in the second quarter of 2005
22 over the prior year period. In addition, power sales

1 rose 27 percent averaging \$38 per megawatt hour in
2 the second quarter of 2005 versus approximately \$30
3 per megawatt hour in last year's second quarter."

4 A. That is what the statement said with one
5 addition, or I shouldn't say addition. I believe you
6 said "in addition, power sales." I believe it read
7 power prices rose 27 percent, but that is what that
8 says.

9 Q. Do you have any reason to disagree with
10 that statement?

11 A. No.

12 Q. Now, one of the reasons that these
13 interchange revenues are increasing is that Ameren's
14 generation costs are among the lowest in the United
15 States, isn't that right?

16 A. That is one of the reasons that Ameren is a
17 low cost energy provider.

18 And in this particular situation,
19 Ameren did not have a refueling outage at its
20 Callaway nuclear power plant during the same period
21 whereas last year we did, and that is on our
22 regulated Union Electric operations. So as a result,

1 we had more generation available for sale in the
2 interchange markets during this time period.

3 MS. HEDMAN: Would you please mark this as AG
4 Cross Exhibit 15?

5 (Whereupon AG Cross Exhibit 15
6 was marked for identification
7 as of this date.)

8 Q. Mr. Baxter, you're looking at a document
9 that's been marked as AG Exhibit 15.

10 Is this document Ameren's 2004 summary
11 annual report?

12 A. It appears to be.

13 Q. And could you please turn to Page 12 of the
14 report?

15 A. I believe I am there.

16 Q. And does that page have a headline that
17 says, "Our plants are amongst the lowest cost
18 generators in the United States"?

19 A. It does.

20 Q. Does the annual report state on that page
21 that Ameren's generating plants achieved an all time
22 company low total generating cost of \$25.07 per

1 megawatt hour placing us amongst the lowest cost
2 generators in the U.S. Our plants also achieved an
3 all time record capacity factor of 76 percent in an
4 all time production record of 75 million megawatt
5 hours.

6 Does that appear on Page 12?

7 A. It says on Page 12, "Nuclear plants
8 achieved an all time company low total generating
9 cost of \$25.07 per megawatt hour." And then I
10 believe how you read it the rest of the way,
11 Ms. Hedman, is correct.

12 Q. And I believe that sentence that you read
13 that began with nuclear plants actually begins on
14 Page 11, and it says, our coal and nuclear plants
15 achieved an all time company low total generating
16 cost of \$25.07, is that correct?

17 A. Yes, it does, that's correct. That would
18 be for the entire Ameren fleet, both regulated and
19 nonregulated.

20 Q. So you have knowledge of those figures and
21 have no reason to believe that statement is untrue?

22 A. I have no reason to believe that statement

1 is not correct.

2 Q. And then there are a couple of other items
3 in this annual report relating to the auction
4 proposal that I'd like to have you verify.

5 On Page 13 and going on to Page 14,
6 the report states, "Ameren expects its
7 non-rate-regulated power generation business to be
8 able to sell approximately 14 million megawatt hours
9 of power currently committed to these distribution
10 businesses in the open market. Market prices for
11 similar contracts today are above the levels we
12 received under our current commitments."

13 Did I read that correctly?

14 A. You did.

15 Q. And I take it that the references to
16 distribution businesses in that section is a
17 reference to AmerenCIPS, AmerenCILCO and AmerenIP, is
18 that correct?

19 A. No. That would only be to AmerenCIPS and
20 AmerenCILCO and not to AmerenIP.

21 We procure energy for AmerenIP
22 independently. As part of our Illinois Power

1 acquisition, we entered into an agreement with Dynegy
2 among others to supply the power and supply needs for
3 AmerenIP.

4 Q. Do you have any reason to believe that the
5 two sentences that I just read from Pages 13 and
6 going over to 14 in the annual report are untrue?

7 A. I have no reason to believe they are
8 untrue.

9 Q. A bit further along on Page 14, the annual
10 report states that "the location and low cost of our
11 generation assets positions Ameren very well to
12 compete in the new Illinois market, and with our
13 entry into the Midwest Independent Transmission
14 System Operator in 2004 -- and I'll shorten this --
15 we are equally well positioned to compete beyond our
16 traditional market area."

17 Do you agree with that statement?

18 A. I do.

19 Q. And finally, I'd like to turn your
20 attention to the graphic that appears on Page 8 of
21 the 2004 annual report.

22 The caption to that report reads, "at

1 \$50.14 per share, Ameren's share price closed 2004 at
2 an all time high. Including dividends, this
3 appreciation and share price brings Ameren's
4 five-year cumulative return to almost 108 percent."

5 Do you have any reason to question the
6 accuracy of that statement?

7 A. No.

8 MS. HEDMAN: I'd like to mark that as AG 16
9 Cross Exhibits 16, 17, 18.

10 (Whereupon AG Cross Exhibits 16,
11 17 and 18 were marked for
12 identification as of this
13 date.)

14 Q. Mr. Baxter, the documents you have before
15 you have been marked as AG Cross Exhibits 16, 17 and
16 18.

17 Now, we were just speaking of the date
18 of the document that is AG Cross Exhibit 16 is
19 October 28, and I'm reading the date of the earliest
20 transaction and the date of AG Exhibit 17 is
21 2-15-2005, and then the final one, AG Exhibit 18, is
22 dated 12-31-2004.

1 A. Yes.

2 Q. Are these SEC Form 4s that have been filed
3 with the United States Securities and Exchange
4 Commission on your behalf during the past year?

5 A. Exhibits 16 and 17 are Form 4s. Exhibit 18
6 is a Form 5.

7 Q. Indeed. Thank you.

8 And do these forms report changes in
9 beneficial ownership of Ameren Corporation stock
10 options and/or restricted stock that you received as
11 part of your compensation package as chief financial
12 officer and executive vice president of Ameren
13 Corporation?

14 A. Yes, they do.

15 Q. Please turn your attention to AG Cross
16 Exhibit 16.

17 Does this document report an
18 October 28, 2004 transaction that generated net
19 proceeds for you of over \$750,000 when you exercised
20 your options on 18,838 Ameren shares and sold 15,848
21 of these shares?

22 A. With regard to your statement about the net

1 proceeds and the \$750,000, I do not see where that is
2 noted on this.

3 Q. Well, Mr. Baxter, if one were to calculate
4 that amount, one could go to Page 3 of the document,
5 and looking at the number of shares in which options
6 were exercised and stock was sold and looking at the
7 price in column 2 and the price in column 8, would it
8 be possible to calculate that looking at this
9 document?

10 A. It would be possible to calculate a
11 difference between those two prices, and I believe
12 you asked whether they yielded net proceeds to me.

13 Could you explain to me what you mean
14 by net proceeds?

15 Q. What I mean by that is the difference in
16 the price at which you exercise the option and the
17 price at which you sold the shares yielded you a
18 total of, a net of \$750,000 or something more than
19 that. It's actually by my calculation --

20 MR. FLYNN: A net, you're asking for a net?

21 MS. HEDMAN: Yes.

22 The difference is \$751,394.

1 Would you accept that subject to
2 check?

3 A. Well, I guess certainly subject to checking
4 your numbers, I think that would have to be done to
5 make sure I understood, but I think what I need to
6 clarify is I believe with this particular
7 transaction, what ended up happening was that shares
8 were sold and then purchased additional Ameren common
9 stock in this particular situation largely due to the
10 fact that I have ownership guidelines under my plan
11 that I need to keep.

12 That's not necessarily reflected on
13 this report, but that is indeed what happened, so
14 that's why I was asking you about net proceeds, and I
15 would have to verify the numbers; not to suggest that
16 your calculation isn't correct.

17 Q. Well, then moving on to AG Cross
18 Exhibit 17, does this form report a February 15, 2005
19 transaction that generated, again, by my method of
20 calculation, net proceeds for you of over \$72,000
21 when you exercised your option and sold 3,525 Ameren
22 shares?

1 A. Subject to verification of the numbers,
2 yes, that's what this would purport to do.

3 Q. And then finally, please turn your
4 attention to AG Cross Exhibit 18.

5 Does this form report a December 31,
6 2004 transaction in which 6,883 shares of restricted
7 Ameren stock were added to your 401(k) account?

8 A. I believe this form shows that on
9 February 11, 2005, restricted shares were added to my
10 account. The form may have been dated 12-31-04 but
11 the transaction itself appears to have occurred on
12 February 11, 2005.

13 MS. HEDMAN: All right. Thank you.

14 MR. FLYNN: Judge, we're checking the math
15 right now on AG Cross Exhibit 16 and maybe, I'm not
16 suggesting we do it right now, but at some point
17 Ms. Hedman and I can check our math together.

18 We'd be willing to stipulate to a
19 number. I don't know whether it will be the number
20 that she offered but we'd prefer to take care of it
21 by subject to check procedure today, and we'll try to
22 do that by agreement.

1 JUDGE JONES: Thank you.

2 Q. BY MS. HEDMAN: All right. Mr. Baxter, you
3 identified AG Cross Exhibit 12 which is the Ameren
4 corporate facts sheet as an Ameren document, is that
5 correct?

6 A. Yes, I believe it to be true.

7 Q. And can you similarly identify AG Cross
8 Exhibit 13, the Ameren March 2005 investor
9 presentation?

10 A. It would appear to be an Ameren investor
11 presentation document.

12 Q. And similarly, can you identify AG Cross
13 Exhibit 15 authenticated as an Ameren news release?

14 A. I'm sorry. What is Cross Exhibit 15 again,
15 please?

16 Q. Cross Exhibit 15 is the Ameren press
17 release dated July 28th.

18 MR. FLYNN: I'm sorry. Excuse me. I have this
19 labeled as number 14. Excuse me.

20 MS. HEDMAN: The first one is 13 or, excuse me,
21 is 12. The investor presentation is 13, and the
22 Ameren news release is 14.

1 Are we in agreement?

2 MR. FLYNN: Yes.

3 Q. BY MS. HEDMAN: Then AG Cross Exhibit 15 is
4 a copy of the Ameren 2004 Summary Annual Report.

5 Can you authenticate this as an Ameren
6 document?

7 A. It would appear to be; subject to review
8 but it would appear to be, certainly.

9 Q. And then finally AG Cross Exhibits 16, 17,
10 and 18, do you recognize those as the same documents
11 that were filed with the Securities and Exchange
12 Commission on your behalf?

13 A. Ms. Hedman, they would appear to be. They
14 look like they were pulled off the SEC Web site. I
15 have no reason to believe that they're not.

16 MS. HEDMAN: I have no further questions, but I
17 would move the admission of AG Exhibits 12 through
18 18.

19 JUDGE JONES: Any objection?

20 MR. FLYNN: No objection.

21 JUDGE JONES: Let the record show that AG
22 Cross-Examination Exhibits 12 through 18 inclusive

1 are admitted into the evidentiary record in this
2 proceeding.

3 (Whereupon AG Cross Exhibits 12
4 through 18 were admitted into
5 evidence at this time.)

6 JUDGE JONES: Mr. Rosen, do you still have
7 questions?

8 MR. ROSEN: 15 minutes.

9 JUDGE JONES: You're up.

10 CROSS-EXAMINATION

11 BY MR. ROSEN:

12 Q. Mr. Baxter, could you look back at AG Cross
13 Exhibit No. 15 and turn to Page 12?

14 A. If you could bear with me, Mr. Rosen, while
15 I make sure I have the right exhibit.

16 Would that exhibit be the summary
17 annual report?

18 Q. Yes, it is.

19 A. I'm sorry. The page?

20 Q. 12.

21 And correct me if I'm wrong but in
22 this section you're talking more about your

1 subsidiaries or your entities that produce
2 electricity, isn't that correct?

3 A. On this page we talk about our generation
4 operations as well as we talk about our energy
5 delivery operations.

6 Q. Well, let's just focus in on your
7 generation, businesses that generate electricity, and
8 it begins on Page 11 and ends on Page 12, but you're
9 saying, "In our power generation business, low cost
10 and high production are equally important."

11 And then you go on to say, "In 2004
12 you made significant improvements and achieved an all
13 time company low total generating cost of \$25.07 per
14 megawatt hour," right?

15 A. That is correct.

16 Q. Okay. And then beginning in the next, I
17 call it a paragraph although it's not indented, it
18 says, "These improvements position us to succeed in
19 increasingly competitive markets."

20 Do you see that?

21 A. I do.

22 Q. When Ameren uses the term competitive

1 markets in the exhibit there, what did it mean?

2 A. The competitive markets in this particular
3 context could include the MISO markets in which we
4 operate among others.

5 Q. Okay. So we're really referring here to
6 the wholesale markets for the selling and buying of
7 power between generators and buyers of generated
8 power. Is that a fair statement?

9 A. That's a fair statement.

10 Q. And then it says, "And in markets where
11 price is driven primarily by the cost of natural
12 gas." Do you see that?

13 A. I do.

14 Q. So in this that context when we talk about
15 markets, are we again talking about the wholesale
16 market for the sale and purchase of electricity
17 between generators of power and buyers of power?

18 A. That's correct.

19 Q. And again, what markets are you talking
20 about primarily -- the MISO market?

21 A. I think the MISO market would certainly be
22 an example, among others, that we participate in.

1 Q. And is it your opinion too that prices in
2 that particular market is driven primarily by the
3 cost of natural gas?

4 A. Yes. That is what this states.

5 Of course, there the price can also be
6 driven by others factors. It would depend upon
7 whether it's on peak or off peak, and so therefore,
8 coal certainly can be a driver of market prices among
9 other things.

10 Q. Okay. But do you generally agree with the
11 statement that market prices are primarily driven by
12 the cost of natural gas? That's what it says.

13 A. At the point in time that we made that
14 statement, that is correct. That does not
15 necessarily mean that will be that way in the future.

16 Q. Well, has it changed as of today?

17 A. I think as I stated before, prices are
18 driven by natural gas but also can be driven by other
19 factors including coal.

20 Q. As of today, the prices that we're talking
21 about on the MISO markets, are they still driven
22 primarily by the cost of natural gas?

1 A. I wouldn't be able to say whether that's
2 the case exactly today as we speak at this point in
3 time.

4 Q. How about this week?

5 A. Just in general, I think natural gas
6 certainly is a factor as well as coal prices.

7 Q. Okay. But would you agree that, let's say
8 this week or the week before or even the week before,
9 that the market prices on MISO are still generally
10 driven primarily by the cost of natural gas?

11 A. Again, Mr. Rosen, it depends on what period
12 you're talking about.

13 I think if you're talking about off
14 peak periods, then I think you would be looking more,
15 not to natural gas, you'd be looking more at
16 coal-fired generation.

17 As you go into shoulder months during
18 this particular time period, then natural gas isn't
19 necessarily on the margin as much as coal-fired
20 generation.

21 If you're looking at on peak periods,
22 especially during the summer, then in many respects,

1 natural gas prices could be driving it, so it really
2 depends upon the time.

3 Q. Okay. But when this statement was made in
4 the Ameren summary annual report, what period of time
5 were you referring to?

6 A. I believe in general that was referring to
7 the year 2004.

8 Q. Okay. Up through 2005, taking everything
9 into consideration what you've just said, are the
10 prices on MISO still generally driven by the cost of
11 natural gas?

12 A. I'll stick with the answer that I provided
13 to you before.

14 Q. By the way, when the statement was made in
15 2004, it wasn't Ameren's intention to mislead anyone?

16 A. Absolutely not. That statement was fair
17 and accurate.

18 Q. Now, you're an officer of Ameren
19 Corporation, are you not?

20 A. I am.

21 Q. Do you hold any responsibilities as an
22 officer to the companies that are listed here in this

1 proceeding, AmerenCILCO, AmerenCIPS and AmerenIP?

2 A. Yes. I'm an officer of all three.

3 Q. And who are the customers of these
4 companies?

5 A. Which companies are you referring to?

6 Q. AmerenCILCO, AmerenCIPS, and AmerenIP.

7 A. Are you talking about ratepaying customers
8 or are you talking about stakeholders.

9 Q. Ratepaying customers.

10 A. The customers are those within the service
11 territory of AmerenIP, AmerenCILCO and CIPS.

12 Q. And what do you believe your
13 responsibilities are with those customers?

14 A. My responsibility to them is to deliver low
15 cost rates, good customer service, excellent
16 reliability among other things. I balance all those
17 matters.

18 Q. Are you also an officer to any of the
19 Ameren entities that produce electricity?

20 A. Yes, I am; AmerenUE and Ameren Generating
21 Company.

22 Q. And do you owe the shareholders of that

1 company any duties as an officer of those companies?

2 A. In my responsibilities for all those
3 entities, I owe duties to several stakeholders
4 including shareholders, including customers,
5 including employees, a host of stakeholders.

6 Q. Okay. And what do --

7 JUDGE JONES: If I can interrupt you for just a
8 second. I apologize for doing so.

9 Could someone check and see if someone
10 is in the Chicago office? If so, we'll put a lapel
11 mike on the witness. There was not before but maybe
12 there is now.

13 MR. ROSEN: Is anyone there in Chicago?

14 (No response.)

15 JUDGE JONES: All right. Thanks for checking.

16 Q. BY MR. ROSEN: All right. What are your
17 duties to the shareholders of the Ameren Corporation?

18 A. My duties to the shareholders are to earn
19 them a fair return on their investments among other
20 things.

21 Q. Now, you're here to support the auction,
22 are you not?

1 A. I am.

2 Q. And you think the auction is a good thing,
3 isn't that correct?

4 A. Absolutely.

5 Q. Do you think the auction is a good thing
6 for people who plan to bid into the auction?

7 A. I do.

8 Q. Well, you seem to be on the fence of
9 whether the Ameren generating companies are going to
10 participate in the auction. You don't seem to want
11 to commit to that.

12 Is there a reason why?

13 A. No reason. I think the generating
14 companies still have to make that ultimate
15 determination.

16 I'm just telling you at this point in
17 time, those generating companies to the best of my
18 knowledge have not committed as to whether and to
19 what extent they'll participate in the auction.

20 Q. Why not?

21 A. I think it's an analysis that still is
22 ongoing.

1 Q. And what kind of analysis are they doing?

2 A. Well, I think one of the most important
3 analyses that they will consider is exactly the
4 ultimate rules associated with the auction process
5 itself like other suppliers. If they don't believe
6 it's going to be a competitive transparent auction,
7 then they may choose to not participate in the
8 auction.

9 Q. Okay. And what is it about the rules now
10 that might lead them to believe that it's not going
11 to be a competitive transparent process?

12 A. Well, the rules have not been established
13 yet, but as proposed under the Ameren Corporation
14 proposal among others, it is our belief that it would
15 be a fair competitive process.

16 Q. All right. So if the rules stay as they
17 are, is it Ameren generating companies intention
18 either directly or indirectly to bid into the
19 auction?

20 A. Again, that decision has not ultimately
21 been made.

22 However, as I said before, it

1 certainly is a possibility.

2 Q. Well, in terms of possibilities, is it a 20
3 percent possibility, is it a 50 percent possibility,
4 or are we talking about a 90, 95 percent possibility?

5 A. You know, I'd hate to put percentages on
6 it. It would be premature for me to do that.

7 Again, certainly, if the auction
8 process rules are implemented as they are, then that
9 would be a significant consideration I am sure by the
10 Ameren Energy generating companies' decisions as to
11 whether they will participate in the auction.

12 Q. Well, if it doesn't participate in the
13 auction, what are some of the alternatives that it
14 has thought about in terms of selling the power it
15 not has?

16 A. Well, I think they have other alternatives
17 to sell to other entities that are in need of
18 generation or perhaps to pursue sales in the MISO
19 marketplace; potentially pursue sales to the extent
20 they can in the PJM marketplace.

21 They have a host of alternatives, and
22 those alternatives are just currently under

1 consideration.

2 Q. Well, despite its abilities to sell in the
3 PJM market and the MISO market, why would it
4 participate in the auction?

5 A. Well, I think at the end of the day when
6 the final analysis is done, it may very well choose
7 that that is an appropriate place for them to
8 participate in the auction. That is the analysis
9 that still needs to be done.

10 Q. In terms of selling power other than
11 through the auction process, would it consider
12 entering into bilateral contracts with companies that
13 need to acquire electricity?

14 A. That is an alternative.

15 Q. Today, other than the companies that are
16 involved here, has any of the Ameren generating
17 companies entered into bilateral contracts to provide
18 electricity to companies?

19 A. Yes, I believe they have.

20 Q. Do you know the duration of any of those
21 contracts?

22 A. I don't know the specifics of the duration

1 of those contracts. I think some are potentially
2 less than a year and some are greater than a year.

3 Q. What is your understanding of the role of
4 the Illinois Commerce Commission immediately after
5 the auction ends?

6 I'm not talking about the pre-approval
7 stages, and I'm not talking about while the auction
8 is taking place, but I'm talking about what the ICC's
9 responsibilities are immediately after the auction
10 process is concluded.

11 A. Well, I think in determining what the ICC's
12 responsibilities are ultimately comes down to a legal
13 determination in terms of what they are charged to
14 do.

15 However, it is our belief and it would
16 be my understanding that the ICC as part of this
17 process would deem that all the processes and
18 procedures that lead up to the ultimate auction -- I
19 presume what you mean by that is when the final bids
20 are in and there's a final clearing price as a result
21 of the auction, that the ICC all along the way has
22 deemed, as part of this process would deem, that all

1 the procedures and processes are indeed appropriate
2 and prudent.

3 And then if all those processes,
4 whatever number they are, are followed faithfully and
5 they obviously are going to be a meaningful
6 participant in observing those actions, if they
7 believe that those are followed faithfully and the
8 auction process is fair and transparent, then it
9 would be my judgment that they would accept the
10 ultimate price that results from the auction.

11 Q. And how long do they have to do all that?

12 A. Craig Nelson would probably be the best
13 person to ask but to my understanding, I believe it's
14 three days.

15 Q. Now, in terms of the clearing price that
16 arises from the auction process, do the Ameren
17 Companies that are here named as parties plan to do
18 any independent analysis if you will of whether those
19 clearing prices are reflective of some market price?

20 A. What do you mean by analysis.

21 Q. Well, are the Ameren Companies here going
22 to take a look for themselves whether they believe

1 that the clearing price as a result of the auction
2 seem fair in relation to some market, whatever that
3 market might be?

4 A. I believe the Ameren Companies would
5 conclude that as a result of the auction process,
6 which we believe is a competitive and the least cost
7 process, that the result of that process would be the
8 most competitive price to be had and would then
9 submit, as we've submitted in this process, that we
10 would accept the ICC's determination as to whether
11 that auction price was appropriate.

12 Q. Okay. So are you telling me then that
13 other than accepting the fact that the auction seems
14 to run the way it was supposed to run, the rules were
15 followed, that the Ameren Companies listed here will
16 not do an independent determination of whether the
17 clearing prices that result from the auction are fair
18 relative to the market, whatever that market might
19 be?

20 A. At this time, I don't believe that we
21 would.

22 Q. Now, on Page 6 of your testimony, beginning

1 on Line 94.

2 A. Yes, sir.

3 Q. And I want to refer you -- I don't mean to
4 do anything other than shorten up my time because I
5 don't have much time obviously.

6 The last part of your testimony says,
7 "The ICC can do certain things which can then reject
8 the results of any auction that it believes was run
9 improperly or that it otherwise believes to have not
10 produced a valid result."

11 Do you see that?

12 A. I do.

13 Q. And that's your statement, right?

14 A. That is correct.

15 Q. Okay. Do you have an opinion of what might
16 happen that might not otherwise produce a valid
17 result which would lead to the ICC rejecting the
18 auction?

19 A. I'm sorry, Mr. Rosen. I'm not sure I
20 understand your question.

21 Q. I'm not sure that I understood it either so
22 I'll restate it.

1 Here you make the statement that you
2 believe the Commission under certain circumstances
3 can reject the auction, right?

4 A. That's correct.

5 Q. And one of the circumstances you state is
6 that the ICC believes that the auction has not
7 produced a valid result.

8 Do you see that?

9 A. Yes.

10 Q. Is that a fair paraphrase of what that
11 testimony says?

12 A. Yes.

13 Q. All right. So I'm asking you based on the
14 statement made what you believe might be the
15 circumstances that would cause the ICC to conclude
16 that the auction has not produced a valid result.

17 A. Again, Mr. Rosen, this would be
18 speculation, but perhaps they may have felt that the
19 specific processes which have been outlined have not
20 been followed faithfully by potentially either the
21 bidders or other participants in the party, so as a
22 result of the processes, whatever, that would be

1 outlined here, they may deem that as a result of
2 those processes not being followed faithfully, then
3 they no longer have valid results.

4 Q. Okay. And does a valid result mean to you
5 that it could be that the clearing price that you
6 referred to earlier in your testimony is not really
7 reflective of market prices, whatever that market
8 might be?

9 A. Well, I believe the ICC, in the example I
10 gave, the ICC would believe that the auction was not
11 run fairly, and if it was not run fairly, you may
12 still have ultimate price but it may shielded out
13 market participants that shouldn't have been. I
14 can't put myself in the shoes of what may be the
15 facts and circumstances.

16 Q. All right. Well, if you were sitting there
17 as the auction manager and you saw a clearing price,
18 how would you determine whether or not that clearing
19 price was reflective of some market price, whatever
20 that market might be?

21 A. You know, I think to be honest with you, we
22 have an expert who is an auction manager that we put

1 forth. That would be a more appropriate question for
2 that person.

3 Q. Okay. And it's my understanding that
4 you're recommending Dr. LaCasse be the auction
5 manager?

6 A. That is correct.

7 Q. And Ameren is going to pay her to act as
8 auction manager, is that correct?

9 A. To be honest with you, I believe that would
10 be the case, but I think Mr. Nelson would be the best
11 person to ask that question.

12 MR. ROSEN: I have nothing further.

13 JUDGE JONES: Thank you, Mr. Rosen.

14 Mr. Flynn, any redirect?

15 MR. FLYNN: I just have a few quick questions.

16 REDIRECT EXAMINATION

17 BY MR. FLYNN:

18 Q. Mr. Baxter, could you refer to AG Cross
19 Exhibit 15, the 2004 annual report?

20 A. Yes.

21 Q. Could you turn to Page 12?

22 Both Ms. Hedman and Mr. Rosen asked

1 you some questions about this \$25.07 per megawatt
2 hour figure.

3 Do you see that?

4 A. I do.

5 Q. All right. And that is a figure that
6 relates to both coal and nuclear plants, right?

7 A. That is correct. That is a number which
8 represents our entire fleet.

9 Q. All right. And it includes the coal plants
10 of UE and those owned by the non-rate-regulated
11 entities?

12 A. That's correct, and it would be even beyond
13 coal and nuclear.

14 Q. Okay. And the non-rate-regulated entities
15 own how much nuclear generation?

16 A. Zero.

17 Q. And these are production costs, not bus bar
18 costs, is that correct?

19 A. That's correct.

20 Q. On AG Cross Exhibit 13 which is the
21 investor presentation, you were asked by Ms. Hedman
22 about the statement, "Nearly 85 percent of 2004

1 earnings were from regulated operations."

2 Do you recall that?

3 A. I do.

4 Q. And do the regulated operations reflected
5 on or referenced here include the regulated
6 operations of Union Electric Company?

7 A. They do.

8 Q. Also I refer you to AG Cross Exhibit 12
9 which is the Ameren corporate facts sheet.

10 A. Yes.

11 Q. And here in a moment of convergence,
12 Ms. Hedman asked you about the total capacity of the
13 non-rate-regulated generation, and Mr. Rosen asked
14 you about other contracts that the non-rate-regulated
15 entities have.

16 Of the 6,200 megawatts that Ms. Hedman
17 referenced, it's correct, isn't it, and Ameren has
18 stated in this case, that as a result of the other
19 contracts Mr. Rosen referenced, these entities have
20 something less than 4,000 megawatts available
21 beginning in 2007, right?

22 A. I believe that is correct.

1 MR. FLYNN: That's all the redirect I have.

2 JUDGE JONES: Is there any recross?

3 There is not.

4 Thank you, Mr. Baxter. You may step
5 down.

6 (Witness excused.)

7 JUDGE JONES: Off the record.

8 (Whereupon an off-the-record
9 discussion transpired at this
10 time.)

11 JUDGE JONES: We'll break for lunch now and
12 return at 1:45.

13 (Whereupon the lunch recess was
14 taken.)

15

16 AFTERNOON SESSION

17 JUDGE JONES: Back on the record.

18 We have the final two Ameren Company
19 witnesses for cross this afternoon.

20 It's my understanding the order is to
21 be reversed, is that correct?

22 MR. TROMBLEY: Yes, Your Honor.

1 JUDGE JONES: Does anybody have any objection
2 to reversing the order of the two Ameren witnesses?

3 That will be done.

4 Mr. Townsend, was there a matter you
5 wanted to address briefly before we get to the
6 witnesses?

7 MR. TOWNSEND: Yes, Your Honor.

8 Just for the record, we've had
9 conversation with the attorneys for the IIEC
10 companies and the Ameren Companies with regards to
11 the stipulation and agreement that was entered into
12 the record yesterday.

13 We have come to an agreement with
14 those parties that for the previews of the tariffs
15 that are referenced in that stipulation and agreement
16 that Ameren likewise is willing to and has agreed to
17 preview those tariff filings with the Coalition of
18 Energy Supplier Companies in a like time frame.

19 So there's a preview of, first, the
20 interruptible service tariff that the Ameren
21 Companies are going to file. They've agreed that
22 they would preview those tariffs with the IIEC

1 companies at least 14 days prior to filing their
2 request with the Commission to implement same, and so
3 likewise, the Ameren Companies have agreed to meet
4 with the CES companies within the same time frame.

5 Then in Section 3 of the stipulation,
6 the Ameren Companies have agreed to preview the
7 proposed demand charge design with the IIEC companies
8 at least 30 days prior to filing the request with the
9 Commission, and likewise, the Ameren Companies have
10 agreed to meet with the CES companies within the same
11 time frame.

12 JUDGE JONES: And what is it that you are
13 seeking happen today?

14 MR. TOWNSEND: We just ask an acknowledgement
15 on the record from the parties to that stipulation
16 and agreement that that is acceptable with them and
17 that they have agreed to that.

18 JUDGE JONES: Are you referring to Ameren/IIEC
19 Joint Exhibit No. 1?

20 MR. TOWNSEND: Yes, I am, Your Honor. Thank
21 you.

22 JUDGE JONES: All right. I guess other parties

1 to this have heard Mr. Townsend's statement.

2 Any response?

3 MR. FITZHENRY: The Ameren Companies agree to
4 meet with these CES companies as he's indicated.

5 MR. ROBERTSON: And the IIEC companies have no
6 objection to that procedure.

7 JUDGE JONES: Thank you.

8 Does anyone else have any comments on
9 that?

10 Let the record show no response.

11 Just one point of clarification on the
12 so-called stipulation and agreement. Ameren IIEC
13 Joint Exhibit No. 1 that was admitted yesterday is in
14 the record.

15 Were the parties intending to revise
16 that and refile it or simply rely on the statements
17 of record today in light of this development?

18 MR. FLYNN: Our intent was simply to rely on
19 Mr. Townsend's statements on the record and our
20 acknowledgement of those statements.

21 MR. TOWNSEND: That's correct, Your Honor.

22 JUDGE JONES: All right. Thank you.

1 Call your witness.

2 MR. TROMBLEY: I believe Mr. Blessing needs to
3 be sworn.

4 JUDGE JONES: I believe you're right.

5 (Whereupon the witness was sworn
6 by Judge Jones.)

7 JUDGE JONES: Thank you.

8 JAMES C. BLESSING

9 called as a witness herein, on behalf of Ameren
10 Companies, having been first duly sworn on his oath,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TROMBLEY:

14 Q. Good afternoon, Mr. Blessing. Please state
15 your name for the record?

16 A. James C. Blessing.

17 Q. By whom are you employed?

18 A. Ameren Services Company.

19 Q. Have you prepared or caused to be prepared
20 under your direction and control prefiled direct
21 testimony for submission to the Illinois Commerce
22 Commission in consolidated Dockets 05-0160, 05-0161,

1 and 05-0162, the Ameren Company dockets?

2 A. Yes, I have.

3 Q. Has that testimony been designated
4 Respondent's Exhibit 3.0 with attachments thereto
5 designated Respondent's Exhibits 3.1, 3.2 and 3.3?

6 A. Yes, it has.

7 MR. TROMBLEY: For the record, Your Honor,
8 these exhibits were filed on e-docket on February 28,
9 2005.

10 Q. Do you have any additions, corrections or
11 clarifications to that testimony?

12 A. No, I do not.

13 Q. Is that testimony true and correct to the
14 best of your knowledge?

15 A. Yes, it is.

16 Q. Have you also prepared or caused to be
17 prepared under your direction and control prefiled
18 rebuttal testimony for submission to the Illinois
19 Commerce Commission in the Ameren Companies dockets?

20 A. Yes.

21 Q. Is that testimony designated Respondent's
22 Exhibit 11.0 Revised with attachments thereto

1 designated Respondent's Exhibits 11.1 and 11.2?

2 A. That's correct.

3 MR. TROMBLEY: For the record, Your Honor,
4 these exhibits initially were filed in e-docket on
5 July 13, 2005.

6 The revised version of Respondent's
7 Exhibit 11.0 was filed in e-docket on July 26, 2005.

8 Q. Do you have any additions, corrections or
9 clarifications to this testimony?

10 A. No, I do not.

11 Q. Is that testimony true and correct to the
12 best of your knowledge?

13 A. Yes, it is.

14 Q. Have you also prepared or caused to be
15 prepared under your direction and control prefiled
16 surrebuttal testimony for submission to the Illinois
17 Commerce Commission in the Ameren Companies dockets?

18 A. Yes, I have.

19 Q. Is that testimony designated Respondent's
20 Exhibit 18.0 with attachments thereto designated 18.1
21 Revised and 18.2 Revised?

22 A. That is correct.

1 MR. TROMBLEY: Your Honor, for the record,
2 Respondent's Exhibit 18.0 was filed on e-docket on
3 August 29th. The revised versions of Respondent's
4 Exhibits 18.1 and 18.2 were filed on e-docket on
5 September 2, 2005.

6 Q. Do you have any additions, corrections or
7 clarifications to that testimony?

8 A. No, I do not.

9 Q. Is that testimony true and correct to the
10 best of your knowledge?

11 A. Yes, it is.

12 MR. TROMBLEY: Your Honor, I have no further
13 questions, and I would like to offer into evidence
14 Respondent's Exhibits 3.0, 3.1, 3.2, 3.3, 11.0
15 Revised, 11.1, 11.2, 18.0, 18.1 Revised, and 18.2
16 Revised.

17 JUDGE JONES: All right. The exhibits have
18 been offered that are sponsored by Mr. Blessing.

19 Any objections to those exhibits being
20 admitted?

21 Let the record show there are not.

22 Those exhibits are admitted:

1 Respondent's Exhibits 3.0, 3.1, 3.2, and 3.3 filed on
2 e-docket on February 28, 2005, 11.0 Revised filed on
3 e-docket on July 26, 2005, Respondent's 11.1 and 11.2
4 filed on e-docket on July 13, 2005, Respondent's
5 Exhibit 18.0 filed on e-docket August 29, 2005,
6 Respondent's Exhibits 18.1 Revised and 18.2 Revised
7 filed on September 2, 2005 on e-docket. Those are
8 admitted.

9 (Whereupon Respondent's Exhibits
10 3.0, 3.1, 3.2, 3.3, 11.0
11 Revised, 11.1, 11.2, 18.0, 18.1
12 Revised, and 18.2 Revised were
13 admitted into evidence at this
14 time.)

15 MR. TROMBLEY: I tender the witness for
16 cross-examination.

17 JUDGE JONES: It appears parties do have
18 cross-examination for Mr. Blessing.

19 Who would like to start off?

20 MR. LAKSHMANAN: I will, Your Honor.

21 JUDGE JONES: Sure. Mr. Lakshmanan?

22 MR. LAKSHMANAN: Good afternoon, Mr. Blessing.

1 I'm Joe Lakshmanan, and I represent Dynegy in this
2 matter.

3 CROSS-EXAMINATION

4 BY MR. LAKSHMANAN:

5 Q. I have three topics I'd like to discuss
6 with you.

7 First, as I understand the Ameren's
8 proposal as it has evolved over the various stages of
9 testimony in this case, am I correct that for
10 customers with demands of one megawatt and above,
11 those customers will have beginning in January of
12 2007 two Ameren utility service options available to
13 them, realtime pricing and an annual product?

14 A. That's correct. They'll have the BGS-LFP
15 and the BGS-LRTP products.

16 Q. Thank you.

17 With respect to that set of customers,
18 those are one megawatt and above customers?

19 A. Those are one megawatt and above, yes,
20 that's correct.

21 Q. Those who receive service from Ameren under
22 the annual product, how long would they have to

1 remain on the annual product before they would be
2 permitted to switch either to a realtime product or
3 RES service?

4 A. If they were on the annual product, they
5 would be required to stay for the duration of the
6 term of the contract.

7 Following the first auction, that
8 would be a 17-month term.

9 All subsequent auctions would be a
10 12-month term.

11 Q. And in answering my previous question, you
12 did not distinguish, did you, between those customers
13 who chose to be on the annual product as compared to
14 those who defaulted to that product, is that correct?

15 A. No, I did not.

16 Q. So am I correct that regardless of how a
17 customer came to be served on the annual product,
18 they would remain on that until the next auction
19 period began, is that correct, or the next period for
20 the results of the annual auction?

21 A. Yes.

22 Q. Switching topics now.

1 Turning to your surrebuttal testimony,
2 in particular, Page 9 at Lines 201 and 202.

3 A. I'm there.

4 Q. Okay. And there you say, "First, the MISO
5 allows only one market participant per load zone," is
6 that correct?

7 A. That is correct.

8 Q. Are you familiar with the concept of CP
9 nodes and EP nodes in MISO?

10 A. I'm somewhat familiar with those terms as
11 they're used by MISO.

12 Q. And CP stands for commercial pricing, is
13 that correct?

14 A. That's my understanding, yes.

15 Q. And EP stands for elemental pricing, is
16 that correct?

17 A. That sounds correct.

18 Q. Are you aware that under MISO's Business
19 Practices Manual for Energy Markets that EP nodes may
20 be allocated by percent of ownership to more than one
21 CP node provided that the total allocation equals 100
22 percent?

1 A. That sounds accurate to my understanding of
2 how MISO business practice works.

3 Q. Will suppliers under the auctions and under
4 the supplier forward contracts as proposed by Ameren
5 be the load serving entities for MISO purposes?

6 A. No, they will not.

7 Q. Could suppliers serve their slice of the
8 load, their tranches, however many they win, and
9 settle at the load zone average LMP via financial
10 bilateral schedules?

11 A. I'm not that familiar with what a financial
12 bilateral schedule is so I don't know the answer to
13 that.

14 Q. Let me try it again without that phrase
15 then.

16 Could suppliers serve their slice of
17 the load, their tranches, and settle at the load zone
18 average LMP with regard to MISO RTO?

19 A. It is my understanding they would settle
20 with MISO at a load zone LMP.

21 Q. And if that were to be the case, could the
22 definition of delivery point be simplified along the

1 lines proposed by Dynegy in its rebuttal testimony?

2 A. I am not familiar with any replacement
3 language or suggested definition of delivery zone
4 that Dynegy offered in their testimony.

5 Could you provide that to me?

6 Q. One second. Let me see if I have it.

7 (Pause)

8 Q. In drafting your surrebuttal testimony, did
9 you review Mr. Huddleston's rebuttal testimony in
10 this docket?

11 A. Yes, I did.

12 Q. Would you agree subject to check that in
13 Mr. Huddleston's testimony on Page 11, footnote 2, he
14 provides a revised definition for delivery point
15 based on a similar definition that was provided in
16 the ComEd Docket 05-0159?

17 A. Subject to check.

18 Q. And that that definition provides in part,
19 delivery point means the location as specified in
20 Section 2.1(a)(4) which the BGS-FP supplier will
21 supply and each company respectively will accept
22 BGS-FP supply during the delivery period, and then

1 goes on in a subsection enumerated 4, it states the
2 delivery point for BGS-FP supply will be the zone for
3 each company respectively as designated by MISO in
4 its MISO FINSCHED portal if all entities serving load
5 in that respective company zone designate zonal
6 settlement with MISO.

7 It goes on and says, "In the event one
8 or more entities serving load in a respective company
9 zone elect nodal settlement, the delivery point for
10 BGS-FP supply will be the residual zone for that
11 respective company as determined by MISO."

12 Do you recall reviewing that at one
13 point?

14 A. I have reviewed testimony. I'm sure I
15 reviewed that, but that's a lot of words you just put
16 in front of me so... What was the question?

17 Q. Fair enough.

18 If as we were discussing before in
19 terms of a supplier being able to serve their slice
20 of the load and settle at load zone average LMPs who
21 would be the load serving entity, could the
22 definition that Mr. Huddleston provided work in terms

1 of the supplier forward contracts in this case?

2 A. Again, those were a lot of words. That was
3 a fairly lengthy definition that you read to me.
4 First of all, I don't have it in front of me to
5 review.

6 Also, when thinking of modifying words
7 to the contract, I would prefer to have my lawyers
8 review the language to see if it is comparable to the
9 language that we have.

10 My belief is that the definition that
11 we have in our supplier forward contract is
12 sufficient. It does clearly address the two issues
13 that I addressed in my surrebuttal on why the
14 definition needed to be that way.

15 I would be reluctant to admit or say
16 that the language that you've read to me is
17 comparable at this point in time on the stand.

18 Q. Is it possible for more than one party to
19 submit a schedule for any given CP node as that is
20 used in MISO?

21 A. I don't know. My understanding is a CP
22 node is a comparable term to load zone and that there

1 will be one market participant per load zone or per
2 CP node, but MISO business practices and rules, I
3 don't know whether MISO allows that one market
4 participant to submit multiple schedules for that
5 load zone. I don't know why a single market
6 participant would want to.

7 Q. In terms of the companies, the generation
8 companies or others that serve AmerenIP, let's take
9 them as a for instance now, are there more than one
10 generation company that provides service to AmerenIP
11 at this point in time?

12 A. I believe that's being served under
13 contracts with multiple parties.

14 Q. And is it your testimony that only one of
15 those parties is permitted to schedule power to the
16 AmerenIP load zone?

17 A. I am not intimately familiar with how the
18 assets, what I mean by the assets, the load is
19 registered within MISO. I don't know who the market
20 participant for IP load zone is in MISO, so I don't
21 know the answer to that.

22 Q. Last topic.

1 Turn to your surrebuttal testimony, in
2 particular Page 11, Lines 229 to 238. Let me know
3 when you get there.

4 A. I'm there.

5 Q. Okay. As I understand it at that passage,
6 Ameren objects to providing certain forecasts that
7 Dynegy has proposed be supplied by Ameren, is that
8 correct?

9 A. That's correct. We just don't think it
10 makes sense.

11 Q. Are you aware whether any of the Ameren
12 utilities in this case are on a load research
13 program?

14 A. Do the Ameren utilities have a load
15 research program?

16 Q. Yes. Are you aware of any of them?

17 A. I do believe they do load research, yes.

18 Q. And subject to check, would you accept that
19 the order in AmerenIP's last delivery services rate
20 case, ICC Docket No. 01-0432, includes an item in
21 rate base for a load research project with an amount
22 of \$1,554,000?

1 A. I have no knowledge of that.

2 Q. Then you also then would have no knowledge
3 as to whether that same order includes an increase in
4 operating expenses of \$182,000 for the same project?

5 A. No, I would not have any knowledge of that
6 either.

7 MR. LAKSHMANAN: All right. Thank you. That's
8 all I have.

9 JUDGE JONES: Thank you, Mr. Lakshmanan.

10 I believe the other parties have
11 cross.

12 Who would like to go next?

13 MR. REDDICK: I'll go.

14 JUDGE JONES: Mr. Reddick?

15 MR. REDDICK: Mr. Blessing, my name is Conrad
16 Reddick, and I'm here representing the IIEC.

17 CROSS-EXAMINATION

18 BY MR. REDDICK:

19 Q. If I understand your description of your
20 position and job with the Ameren Companies, you're
21 responsible for procuring power supplies for the
22 Ameren utilities, correct?

1 A. Post-2006, yes, that's correct.

2 Q. Post-2006.

3 Do you do that now?

4 A. I am not currently procuring any power
5 supplies.

6 Q. What are your current duties?

7 A. My current duties are to support the
8 development of a process in order for the utilities
9 to procure power post-2006.

10 Q. And in the work that you do in preparing
11 for the work that you will do post-2006, do you try
12 to acquaint yourself with the market for electric
13 supply?

14 A. To some degree, yes.

15 Q. Well, do you follow current prices in the
16 market?

17 A. I occasionally look at where MISO prices
18 are on a given day.

19 Q. What do you look at to review prices?

20 A. I look at a Web site that is set up on my
21 computer. I don't know whether it's an Ameren Web
22 site, whether they've gathered the data and put it

1 there for convenience, or whether it's a direct link
2 to a MISO site but it's a Web site.

3 Q. Do you check only MISO spot market prices
4 or is your area of interest wider than that?

5 A. I generally just look at the spot prices
6 currently.

7 Q. For MISO?

8 A. For MISO.

9 Q. Is it a part of your duties to supply
10 information on electricity supply cost to the Ameren
11 management?

12 A. No, it is not.

13 Q. And will it be post-2006?

14 A. I don't know at this time whether that will
15 be part of my duties or not.

16 Q. In your testimony, you propose separate
17 auctions for customers below one megawatt and those
18 with demand over one megawatt, is that correct?

19 A. Let me make sure I got the question right.
20 I propose separate auctions for customers over one
21 megawatt and below one megawatt?

22 Q. Yes.

1 A. No, that's not correct. We are currently
2 proposing a single auction for all of the products
3 that we are procuring. We are proposing separate
4 products for above one megawatt and below one
5 megawatt.

6 Q. Okay. But we need to clarify the
7 terminology, and we've had a number of terminologies
8 in both cases.

9 There is a single auction?

10 A. Correct.

11 Q. There are multiple products being offered
12 in the auction or being sought in the auction?

13 A. Yes.

14 Q. And these separate products have been
15 deemed auction segments I think I've heard some
16 people call them. Have you heard that?

17 A. I've heard segments. I've heard groups.

18 I think the terminology may have
19 changed throughout the process.

20 Q. Okay. Well, that's what I'm talking about.
21 What do you prefer to call that?

22 A. Let's call them groups.

1 Q. Okay. So we have separate groups being
2 treated in the auction: above one megawatt, below
3 one megawatt?

4 A. That's correct.

5 Q. And is there a fixed price product for both
6 groups?

7 A. Yes, there are fixed price products for
8 both groups.

9 Q. Now, the above one megawatt fixed price
10 group would include all eligible customers, that is,
11 all customers who have demand above that threshold?

12 A. You were talking about the above one
13 megawatt?

14 Q. Yes.

15 A. And you were talking about who is eligible?

16 Q. Who is eligible.

17 A. Yes, I believe all customers above one
18 megawatt will be eligible for that product.

19 Q. And there's no distinction based on type of
20 business? For example, an office business is not
21 distinguished from an industrial customer in this
22 auction group?

1 A. No, there's not.

2 Q. Similarly, a one megawatt office building

3 would not be distinguished from a 100 megawatt

4 factory in the treatment under the auction proposed?

5 A. As far as procuring the power via the

6 auction, no, they would not.

7 Q. Now, can you tell me without divulging any

8 private customer information whether the demand of

9 the largest customer on your system, on the Ameren

10 system, is greater than 100 megawatts?

11 A. I assume you're talking about Ameren

12 Illinois?

13 Q. Yes.

14 A. I believe there are customers above

15 100 megawatts.

16 Q. Above 200?

17 A. Yes, above 200.

18 Q. I won't go much further.

19 300?

20 I'll stop there.

21 A. I'm not sure whether there's any above 300.

22 Q. Okay. There may be. You're not sure.

1 But we know there's some above 200?

2 A. I believe there's some above 200.

3 Q. Now, can you give me an example of the
4 types of customers who would fall in the one to three
5 megawatt range?

6 A. I'm not sure exactly what you're referring
7 to, what types.

8 Q. What type of business it would be.

9 A. Are you asking commercial or industrial or
10 what they're --

11 Q. Be as specific as you can.

12 A. I have not personally looked at what type
13 of customers are in the one to three megawatt group.
14 I would imagine that they consist of commercial and
15 industrial customers.

16 Q. Do you know whether it would be a grocery
17 store or office building or shopping mall or what
18 size might be involved in that one to three megawatt
19 range?

20 A. I don't have any knowledge of that. I
21 could guess if you like.

22 Q. Well, let me ask you to think about a small

1 commercial establishment, one to two megawatt demand.

2 A. Okay.

3 Q. And it's a 9 to 5 business, sales retail
4 and has established hours of business.

5 Now, would you expect for that
6 customer that the load would vary significantly over
7 the course of 24 hours of the day?

8 A. It seems it would vary by time of day.

9 Q. And as the employees arrive or departed at
10 the end of the workday, the load demand would
11 increase or decrease accordingly?

12 A. Yes.

13 Q. And for customers of that type, is the load
14 factor generally high or low?

15 A. It's generally low, lower than somebody who
16 has around the clock usage.

17 Q. And you would need a mix of generation
18 types to serve that load or types of supply products
19 to serve that load?

20 A. Yes.

21 Q. That is to say you wouldn't be able to do
22 an all base load or all peaking or something of that

1 sort?

2 A. I would imagine you could. It may not be
3 the most efficient manner in which to serve that
4 customer.

5 Q. Okay. And if you were using, instead of
6 your own generation you were using wholesale supply,
7 you would need a mix of types of wholesale blocks to
8 efficiently follow that load?

9 A. Not necessarily. You could simply buy from
10 the MISO spot markets.

11 Q. And do you think that would be efficient?

12 A. I wasn't asked whether it would be
13 efficient. I was asked whether I needed to have a
14 varying portfolio of assets to serve that customer,
15 and my reply was no, not necessarily. You could
16 serve it from the spot markets.

17 Q. Okay. If I didn't before serve that load
18 efficiently?

19 A. Again, I don't know that serving that load
20 from the spot markets would be any less efficient.
21 It may be more volatile, but I don't know that it
22 would be any less efficient than having a portfolio

1 benefit.

2 Q. When you say efficient, you're not
3 considering cost as a factor in that?

4 A. Yes, I'm considering cost.

5 Q. Consider a different customer, large
6 industrial manufacturer running three shifts.

7 A. Okay.

8 Q. Is the load factor for that customer likely
9 to be high or low?

10 A. It would be higher than the customer we
11 were speaking of previously.

12 Q. And would the variation in demand over a
13 24-hour period be less than the variation for the
14 previous customer we discussed?

15 A. I would imagine so, yes.

16 Q. And the mix of facilities, the mix of
17 wholesale supply products for an efficient service of
18 that load would probably be a little different?

19 A. If you were intending to put together a
20 portfolio of assets, yes, but I think you could serve
21 that from the spot markets as well.

22 Q. Assuming we're not serving anything from

1 the spot market but we're trying to put together the
2 best portfolio of supply, whether it's owned
3 generation or wholesale supply products, would you
4 expect that the cost of serving the industrial load
5 would be different from the cost of serving the one
6 megawatt small commercial load?

7 A. Are you asking what the average cost to
8 serve them would be or the cost in a specific hour?

9 Q. Why don't you answer them in both respects.

10 A. I would imagine.

11 Let me back up for a second. We are
12 assuming we have a portfolio of assets?

13 Q. Yes.

14 A. Are we talking about marginal costs or
15 total all in costs?

16 Q. Let's start with all in.

17 A. That's a difficult one to answer on the all
18 in cost because we'd have to make many assumptions on
19 the fixed cost associated with the different assets
20 within each portfolio so it would be difficult for me
21 to say.

22 Q. Would the one megawatt customer and the

1 industrial customer require for efficient service of
2 the load different percentages of base load, shoulder
3 power and peaking power?

4 A. In your question you said the one megawatt
5 customer and the industrial customer?

6 Q. Yes. We're comparing.

7 A. The one megawatt is the first one that we
8 talked about?

9 Q. Yes. And the industrial customer would be
10 the manufacturing plant that we talked about.

11 A. It would be my belief that if you put a
12 portfolio of assets to serve each of those customers,
13 they would be different, yes.

14 Q. And is the cost of base load power
15 different from the cost of peaking power?

16 A. Yes.

17 Q. And the cost for peaking power is different
18 from the cost of load following power or shoulder
19 power?

20 A. Could you repeat that?

21 Q. I'll rephrase it.

22 Would the cost of peaking power be

1 different than the cost of load following power?

2 A. I'm a little confused when you say load
3 following.

4 Are you saying full requirements?

5 What do you consider load following power?

6 Q. Power that can increase or decrease on
7 demand, not base load, not peaking.

8 A. My understanding is that both base load and
9 peaking generators can increase and decrease on
10 demand.

11 Are you referring to something in
12 between, an intermediate plant?

13 Q. Yes. And the question was would the cost
14 of that be different from peaking?

15 A. Yes, it would.

16 Q. Are you familiar with the auction products
17 that ComEd is proposing to use?

18 A. I believe I'm familiar with them. I
19 certainly am not an expert on them.

20 Q. Do you agree that ComEd's fixed price
21 product for the 400 kilowatt to three megawatt group
22 is the ComEd auction product that's most closely

1 comparable to your BGS-LFP product?

2 A. That is my understanding, that their
3 equivalent to the LFP product includes customers in
4 the 400 to one megawatt range.

5 Q. And both Ameren and ComEd have revised
6 their auction proposals to allow switching by bidders
7 between the fixed price product of the two companies
8 and the hourly products of the two companies, right?

9 A. That's correct.

10 Q. Would you agree that for suppliers to
11 switch between one product and another, they would
12 require that it be -- let me erase that.

13 You agree that switching between
14 products in one auction and the other auction make
15 sense when the two products are good economic
16 substitutes for each other?

17 A. First I'd like to clarify the question.

18 You said from one auction to another.
19 From one --

20 Q. Ameren.

21 A. -- Ameren Companies' products to the ComEd
22 Companies' products within the same auction? Is that

1 the question?

2 Q. That's correct.

3 A. Okay. Yes, I agree that they need to be
4 substitutes for each other.

5 Q. And if they're not good economic
6 substitutes for each other, then the bidders in the
7 auction are less likely to make those switches. Do
8 you agree?

9 A. Yes, I agree.

10 Q. Do you also agree that the more similar the
11 products are, the more likely we are to have
12 switching?

13 A. I would agree that the more similar that
14 the potential suppliers view the products to be, the
15 more likely that there will be switching.

16 MR. REDDICK: That's all, Your Honor.

17 Thank you, Mr. Blessing.

18 JUDGE JONES: Thank you, Mr. Reddick.

19 I believe there are others with
20 cross-examination.

21 Mr. Rosen?

22 Mr. Townsend?

1 MR. TOWNSEND: Thank you, Your Honor.

2 Happy birthday, Mr. Blessing.

3 THE WITNESS: Thank you.

4 MR. TOWNSEND: Chris Townsend appearing on
5 behalf of the Coalition of Energy Suppliers.

6 CROSS-EXAMINATION

7 BY MR. TOWNSEND:

8 Q. Would you agree that Ameren's default
9 products should be designed to minimize the price --
10 I'm sorry. Strike that.

11 Would you agree that Ameren's default
12 products should not be designed to minimize prices in
13 the auction but rather should minimize the total
14 costs to consumers?

15 A. I believe I said that in some portion of my
16 testimony, yes.

17 Q. And I believe in your testimony in
18 surrebuttal, Lines 134 to 135, you say something
19 along those lines.

20 Are you there?

21 A. Yes, I'm there.

22 Q. Is it appropriate to look at this from the

1 consumer's perspective, that is, look at the total
2 costs that the consumer would incur rather than
3 simply the direct costs imposed as a result of the
4 price charged by Ameren?

5 A. Yes, I would agree with that.

6 Q. Could you please describe the different
7 types of costs that the consumer could incur?

8 A. Related to electricity?

9 Q. The total costs that should be taken into
10 account here.

11 A. Things that come to mind are the generation
12 component and delivery services component of the
13 rates. I believe the transmission component may be
14 billed separately as well.

15 Q. Well, looking at the total costs that the
16 consumers could incur, would you believe that it's
17 appropriate to consider the opportunity costs? That
18 is, Ameren's default product should not unnecessarily
19 impose opportunity costs on consumers?

20 A. I'm struggling with what the opportunity
21 cost would be but --

22 Q. If you look in your surrebuttal testimony

1 at Lines 396 to 400, you talk about a potential lost
2 opportunity cost; that is, losing the opportunity to
3 choose an alternative supplier.

4 Do you see that?

5 A. Yes, I see that.

6 Q. So would you agree that it's appropriate to
7 consider opportunity costs including the potential
8 lost opportunity to choose an alternative supplier as
9 you describe there in your surrebuttal testimony?

10 A. Yes, I would agree.

11 Q. And you've testified that it would be
12 inappropriate for Ameren to finely tune its default
13 products, correct?

14 A. Can you point me to the reference?

15 Q. It was in your discussion of
16 Mr. Dauphinais's proposal I believe.

17 JUDGE JONES: Are you on Page 18 of the
18 surrebuttal?

19 MR. TOWNSEND: Thank you, Your Honor.

20 Q. I believe if you look at the discussion
21 from actually Pages 16 to 18, that's where I was
22 referring.

1 A. Starting at Line 349?

2 Q. Thereabouts.

3 And the question is, "It's your
4 testimony that it would be inappropriate for Ameren
5 to finely tune its default products?" Correct?

6 A. Yes, I would agree with that.

7 Q. The default services should be a "plain
8 vanilla" option, correct?

9 A. Correct.

10 Q. And that's because RESs are in a better
11 position than Ameren to determine and respond to
12 consumers' needs and suppliers, is that right?

13 A. That's correct.

14 Q. And designing finely tuned retail products
15 belongs in the hands of the competitive retail
16 market, correct?

17 A. Correct.

18 Q. It also would be inappropriate for Ameren's
19 default product to inhibit the competitive market,
20 correct?

21 I direct your attention to the Q and A
22 beginning at Line 388.

1 A. Of which testimony?

2 Q. Still the surrebuttal.

3 A. The Q and A starting at Line 388 you said?
4 Okay. I see it.

5 Q. And you'd agree that Ameren's default
6 product should not inhibit the development of the
7 competitive market, correct?

8 A. Correct.

9 Q. And if Ameren were to finely tune its
10 default products, RESs may choose not to enter a
11 particular segment of the market, is that right?

12 A. That's correct.

13 Q. And that would be undesirable?

14 A. Yes.

15 Q. Why is that?

16 A. It would be undesirable because the
17 customer would be better served by the benefits of
18 retail competition rather than a default service
19 option by a utility.

20 Q. Do you agree that Ameren's proposed full
21 requirements default products place certain risks
22 including price risk, volume risk and migration risk

1 on wholesale suppliers?

2 A. Yes.

3 Q. And that's because Ameren is the expert in
4 delivering power, not managing risk, correct?

5 A. Delivering power and not managing
6 generation related risk.

7 Q. I'm sorry. So your testimony is Ameren is
8 the expert in delivering power, not managing
9 generation-related risk?

10 A. That's correct.

11 Q. And it's the wholesale suppliers who are
12 experts at managing generation related risk, correct?

13 A. I believe they are best able to do that
14 function.

15 Q. And likewise, retail suppliers are better
16 able to do that function, correct?

17 A. Are you asking if the retail supplier is
18 better than the utility or the wholesale suppliers at
19 managing generation-related expense?

20 Q. I was comparing it to the utility, not the
21 wholesale suppliers.

22 A. I would assume that the retail suppliers

1 are better positioned to manage that type of risk.

2 Q. Let me just try to clean up a question that
3 Mr. Cooper had punted somewhat to you yesterday.

4 Under Ameren's auction proposal, will
5 designated agents be allowed to enroll customers onto
6 the PPO?

7 A. I don't know.

8 Q. Do you know of any restrictions that would
9 prevent RESs from acting as agents on behalf of
10 customers?

11 A. I do not know what the guidelines and rules
12 are associated with that, so therefore, I don't know
13 of any restrictions. No, I don't.

14 Q. What is your understanding of the typical
15 types of customers who would fall into the 400 kW to
16 1 megawatt customer group?

17 A. Commercial-based and industrial.

18 Q. Nonresidential?

19 A. Nonresidential, yes.

20 Q. Would you think that similar types of
21 customers are in the 400 kW to 1 megawatt customer
22 group throughout the Ameren service territories?

1 A. Yes.

2 Q. Would you think that similar types of
3 customers are in the 400 kW to 1 megawatt customer
4 group in ComEd?

5 A. I would imagine there's commercial
6 industrial customers in ComEd's 400 to 1 megawatt
7 class, yes.

8 Q. Would you say that the load profile of the
9 400 kW to 1 megawatt customer group is more like that
10 of the customer group over 1 megawatt or like that of
11 residential customers?

12 A. I don't know. I haven't looked at those
13 relationships.

14 Q. Ameren uses sample meters to determine load
15 profiles, correct?

16 A. I believe so, yes.

17 Q. Do you know how many sample meters have
18 been deployed?

19 A. No, I do not.

20 Q. Do you have any reason to believe that the
21 load profile of the 400 kW to 1 megawatt group in
22 Ameren differs in some significant way from that same

1 group in ComEd?

2 A. I have not reviewed or looked at the load
3 profiles of either of those groups of customers. I
4 don't know that I can answer that.

5 Q. I'm not asking whether or not you'd
6 reviewed them but I was asking whether you knew of
7 any salient fact that would make the load profile
8 different for some reason for someone in the Ameren
9 400 kW to 1 megawatt group compared to that customer
10 in the ComEd 400 kW to 1 megawatt group.

11 A. I'm not familiar with those load profiles
12 so therefore, I cannot say whether there's any
13 difference.

14 Is that the question, do I know if
15 there's any difference?

16 Q. No. That's not the question.

17 A. I'm sorry.

18 Q. I apologize for not being clear.

19 The question is, do you know of any
20 reason why the load profile of the customers in the
21 400 kW to 1 megawatt group would be different in some
22 significant way from Ameren to ComEd?

1 A. No, I do not.

2 Q. Is it true that there's likely to be some
3 migration risk premium included in the market
4 clearing price of each auction product that Ameren
5 has proposed?

6 A. I do not believe that there will be a
7 migration risk premium for the LRTP products. I'm
8 not sure about the others. I don't know. I would
9 guess that there would be. It's possible but I don't
10 know that for a fact.

11 Q. Well, let's go to your direct testimony at
12 Lines 79 to 85 and let me know when you're there.

13 Actually, let's go even before that.
14 Let's start with the answer at Line 72 of your direct
15 testimony.

16 A. I'm there.

17 Q. Okay. And there you actually testify that
18 the ability of individual customers to choose an ARES
19 creates uncertainty for the BGS suppliers, correct?

20 A. Yes, I do.

21 Q. And you actually testified there that the
22 switching risk is greater for larger customers,

1 correct?

2 A. I'm sorry. I must be at the wrong spot.

3 Did you say 272 or 172?

4 Q. I'm sorry. It's just 72.

5 A. 72. I was way off. I apologize.

6 I apologize one more time. Could I
7 ask you to repeat the question?

8 Q. Looking at your testimony from Lines 72 to
9 85, you do acknowledge that there will be some
10 migration risk premium associated with the market
11 clearing price of each auction product that Ameren
12 has proposed with the exception of the RTP product,
13 correct?

14 A. Yes, that's correct.

15 Q. And the cost premium associated with the
16 switching risk should follow the customer group that
17 creates that risk, correct?

18 A. That's correct.

19 Q. Would you agree that historically, smaller
20 customers such as residential customers in the Ameren
21 service territories have shown less of a propensity
22 to switch suppliers than larger customers?

1 A. I would agree with that.

2 Q. And even in the less than one megawatt
3 customer class, would you agree that commercial and
4 industrial customers in the Ameren service
5 territories have shown more of a propensity to switch
6 suppliers than residential customers?

7 A. Yes, I would agree.

8 Q. Would you agree that post-2006, customers
9 in the 400 kW to 1 megawatt group are more likely to
10 migrate to a RES than residential customers?

11 A. Yes, I would agree.

12 Q. Why is that?

13 A. Because I don't think that post-2006 will
14 have an impact on residential, and I also believe
15 that the 400 to 1 meg is slightly higher than
16 residential currently, so therefore, I would believe
17 that post-2006, it would be higher for the 400 to one
18 meg group.

19 Q. Would you anticipate that the switching
20 statistics for the 400 kW to 1 meg group would
21 improve for the Ameren Companies following the
22 transition period; that is, there would be more

1 switching for this customer group?

2 A. I don't know.

3 Q. Is it conceivable that suppliers will
4 assume that more switching will occur post-transition
5 than historically has occurred in the Ameren service
6 territories for that group?

7 A. Are you asking if it's possible that a
8 supplier could think that?

9 Q. Suppliers as a group.

10 A. Suppliers as a group. It's possible that
11 suppliers as a group may think that, yes.

12 Q. And, in fact, Mr. Nelson testified that he
13 believes that there will be more switching
14 post-transition, correct?

15 A. I vaguely remember a reference to that.
16 I'm not sure which specific customer group he was
17 speaking of.

18 Q. If the 400 kW to 1 megawatt customers have
19 a higher propensity to migrate than do the
20 residential customers, doesn't this mean that keeping
21 them in the same auction product group with the
22 residential customers will mean that residential

1 customers will bear a greater portion of those costs
2 than they should?

3 A. I believe that would assume that the
4 suppliers would include a premium for that risk if
5 they felt that that switching risk was significant
6 enough to include a premium into their price.

7 If that were the case, yes, I would
8 agree.

9 Q. Well, you testified that the suppliers were
10 going to include cost premiums based on switching
11 risk, right?

12 A. In general, yes, but I don't know how they
13 were going to view each specific customer group and
14 the switching that they think will occur in that
15 group in the future and, you know, what type of
16 premium they will place on that.

17 Q. Okay. Well, what happens if we're right
18 but the Commission accepts your proposal; that is,
19 the suppliers do assume that the customers in the 400
20 kW to 1 megawatt class will switch to a RES if
21 they're given the opportunity and they do include a
22 premium and they do bid in a higher price. Would you

1 agree that the higher prices would fall on the backs
2 of residential customers under your proposal?

3 A. I'm not an expert on the rate translation
4 prism, but my lay understanding of that rate
5 transition tool would lead me to believe that the
6 residential customers price may be higher in the
7 scenario you just painted.

8 Q. Well, Ameren opposed the migration premium
9 allocation adjustment that was advocated by the
10 Coalition of Energy Suppliers, didn't it?

11 A. That's really not the area of my expertise.
12 I believe that's the case though.

13 Q. And that would have been one way to isolate
14 those risks, wouldn't it, or it still is, isn't it?

15 A. Again, that's not my area of expertise. I
16 can't really comment on whether that is the
17 appropriate manner of doing that.

18 Q. Well, you're familiar with the idea of the
19 prism, right?

20 A. Yes, I am.

21 Q. And you're familiar with the idea that the
22 prism allocates specific costs to specific customers

1 even within the auction product, correct?

2 A. Correct.

3 Q. And so one way to be able to allocate these
4 risks would be to use a migration premium allocation,
5 right, and that could prevent this from falling on
6 the backs of residential customers, right?

7 A. Assuming you had all the tools and data to
8 support the development of such a mechanism, yes.

9 Q. Well, ComEd has one, doesn't it?

10 A. I am not familiar with that.

11 Q. So we've established that if we're right
12 but the Commission accepts your proposal, residential
13 customers will pay higher prices than they would have
14 for how long; that is, what's the length of the
15 contract term that the suppliers will be bidding on?

16 A. They will be bidding on contract terms of
17 17 months, 29 months, and 41 months.

18 Q. So if the Commission accepts your proposal
19 but we're right, there will be a contract out there
20 for greater than three years that has inappropriately
21 high premiums in it that falls on the backs of
22 residential customers?

1 A. Based on the scenario you just developed,
2 yes, I agree.

3 Q. And if we're wrong, I'm not saying we are
4 but this clearly is a hypothetical, if we're wrong
5 and you're right but the Commission accepts our
6 proposal and includes the 400 kW to 1 megawatt class
7 in with the other customers above 1 megawatt, would
8 you agree that the impact is that those commercial
9 and industrial customers in the 400 kW to 1 megawatt
10 class would pay slightly higher rates for a single
11 year?

12 A. I'm sitting here thinking of what you mean
13 by slightly higher.

14 It's important to consider the fact
15 that --

16 Q. I'm sorry. If slightly is the problem,
17 those customers would pay higher rates for one year,
18 correct?

19 A. Well, those customers would then be grouped
20 in with the 1 megawatt and above customers who have a
21 much much higher propensity to switch than the 400 to
22 1 megawatt customers, so therefore, the risk premium

1 of those larger customers who switch more frequently
2 would then be put on the 400 to 600 kW customer
3 group, so yes, I would agree that would raise their
4 price slightly and artificially as well.

5 Q. But that would be only a one-year contract,
6 right?

7 A. That would be a 17-month contract for the
8 first auction.

9 Q. And if those customers if they thought that
10 price was too high could go out and try to find a RES
11 to provide them with service at a lower rate,
12 correct?

13 A. Assuming that there's RESs out there who
14 wish to service those customers, yes.

15 Q. The migration premium that we've talked
16 about is a theoretical premium, correct? It's not
17 like Rider D that involves a set payment, right?

18 A. There is no hard coated number in any
19 contract if that's what you're asking.

20 Q. And suppliers are going to face this same
21 type of migration risk in both ComEd and the Ameren
22 auctions, right?

1 A. Generally speaking, yes, but I believe that
2 the levels may be different of the amount of risk of
3 migration in the two service territories.

4 Q. Are you familiar with the proposal that was
5 put forward by ComEd in its surrebuttal testimony to
6 address this issue?

7 A. Are you referring to the revised equivalent
8 BGS-LFP product structure?

9 I'm trying to capture the term that
10 you used but I'm not sure what it is.

11 Q. It sounds like you are familiar with that
12 proposal that they put forward?

13 A. I'm vaguely familiar with it, yes.

14 MR. TOWNSEND: May I approach, Your Honor?

15 JUDGE JONES: Go ahead.

16 MR. TOWNSEND: I'm handing you what the court
17 reporter is going to mark as CES Cross Exhibit 1.

18 (Whereupon CES Cross Exhibit 1
19 was marked for identification
20 as of this date.)

21 Q. Have you had an opportunity to review that?

22 A. I have not read it word for word but I've

1 glanced at it, yes.

2 Q. Can you identify it?

3 A. It appears to be a page out of Mr. McNeil's
4 surrebuttal testimony.

5 Q. And does that set forth a chart that
6 summarizes that ComEd surrebuttal testimony proposal
7 that we were just discussing?

8 A. If you tell me that's what it is, yes. I
9 have not reviewed Mr. McNeil's testimony.

10 Q. Is it your understanding that under the
11 ComEd surrebuttal proposal, customers with demands
12 over 400 kW who were served by a RES would have four
13 options for their service after January 1, 2007?

14 A. Can you point to me where on this chart
15 you're -- this is not my chart. I've not reviewed
16 it.

17 Q. On the chart, the first category talks
18 about customers who are taking delivery services RES
19 supplied, right?

20 A. Correct.

21 Q. And it illustrates that that customer would
22 have four separate options, correct?

1 A. This appears to show that, yes.

2 Q. Is that consistent with your understanding
3 of the ComEd surrebuttal proposal?

4 A. I do not have that level of detailed
5 understanding of their proposal.

6 My understanding is that they moved
7 the 400 to 1 meg customers into a different product.
8 That is the extent of my understanding of their
9 proposal.

10 Q. So when you prepared your surrebuttal
11 testimony, you did not consider this as an
12 alternative, is that correct?

13 A. I had not reviewed this at the time of the
14 preparation of my testimony.

15 Q. Is Ameren still open to considering this
16 alternative?

17 A. I don't think it makes sense for our
18 customer group. No, I don't think so.

19 Q. And when you say you don't think so, that's
20 because you previously had not endorsed the CES
21 proposal? Is that what you're basing it upon?

22 A. That's correct.

1 Q. There aren't any new issues that have
2 arisen as a result of the ComEd surrebuttal proposal
3 that you're aware of?

4 A. Again, I have not reviewed the proposal in
5 detail. My level of understanding of that proposal
6 is that they'd moved the 400 to 1 meg customer to a
7 different product group.

8 Q. And let's turn in your surrebuttal
9 testimony where you advocate against changing that.
10 I think it's at Lines 562 to 566 is where that
11 begins.

12 Let me know when you're there.

13 A. Surrebuttal 562 to 566 is what you said, is
14 that correct?

15 Q. Yes.

16 A. Then I am there.

17 Q. There you discuss the difficulty in
18 calculating migration risk premiums, correct?

19 A. That is correct.

20 Q. There are other significant risks that
21 bidders must accept if they're going to bid into the
22 auction, correct?

1 A. Yes, there are other risks.

2 Q. What are those other risks?

3 A. Price risk, volume risk. Like with the

4 load following, they have responsibility for load

5 following risks that would be associated with that.

6 Q. So as a result, they have risks associated

7 with weather?

8 A. Yes.

9 Q. The economy?

10 A. Those would all fall under volume risk.

11 Q. The risk of customers leaving the state?

12 A. Again, that would fall in the volume risk.

13 There's many that would fall under volume risk.

14 Q. And this also is a volume risk that you're

15 talking about here, right, the migration risk?

16 A. Correct.

17 Q. And each of those other risks is difficult,

18 if not impossible, to predict with any degree of

19 certainty or accuracy; wouldn't you agree?

20 A. Yes, I would agree.

21 Q. To the extent that a switching risk premium

22 exists, it would be factored into the supplier's bids

1 regardless of which default product these customers
2 are assigned to, correct?

3 I'm sorry. When I say these
4 customers, again, I'm back to the 400 kW to
5 1 megawatt customer group.

6 A. I'm sorry. My brain just froze up for a
7 second. Could I ask you to repeat that, please?

8 Q. Sure.

9 To the extent that a switching premium
10 exists for customers in the 400 kW to 1 megawatt
11 customer group, it will be factored into the
12 supplier's bids regardless of which default product
13 these customers are assigned, correct?

14 A. I would assume that the suppliers would
15 behave in that manner, yes.

16 Q. So the switching risk premium that you're
17 talking about here would be included in with the
18 residential customers under the Ameren proposal,
19 correct?

20 A. The risks associated with the 400 to 1 meg
21 customers? Is that the question?

22 Q. Yes.

1 A. Yes, it would.

2 Q. And this difficult to predict risk would be
3 included in the 17-month, the 29-month, and the three
4 year five month product, correct?

5 A. I would assume that the suppliers would
6 apply it to each of those, yes.

7 Q. Let's turn in your rebuttal testimony to
8 Lines 675 to 681. Let me know when you're there.

9 A. 675 to 681 in rebuttal, correct?

10 Q. Yes.

11 A. I'm there.

12 Q. And there you're talking about the
13 enrollment window, correct?

14 A. 675 of my rebuttal?

15 Q. Yes, Exhibit 11.

16 A. I believe I'm discussing the testimony of a
17 Mr. James Steffes.

18 Q. The line that I have at 675 begins "In his
19 testimony, Dr. O'Connor states..."

20 A. This is in rebuttal?

21 Q. Rebuttal Exhibit 11.

22 MR. TROMBLEY: We revised that exhibit. It's

1 Exhibit 11 Revised.

2 MR. TOWNSEND: Maybe you can help me find that
3 in your revised testimony where you talk about the
4 75-day enrollment window.

5 MR. TROMBLEY: Jim, is that on Line 55?

6 THE WITNESS: It starts, "In the testimony,
7 Dr. O'Connor states as the first reason..." Is that
8 the right location?

9 MR. TOWNSEND: That's where I was looking.

10 THE WITNESS: Okay. I'm with you.

11 Q. Did Ameren conduct a customer survey to
12 determine the size of the enrollment window that
13 customers want?

14 A. We had conversations with the IIEC
15 customers on two different occasions in which we
16 presented the proposal we intended to file in
17 February.

18 During those conversations, we
19 discussed the BGS-LFP product and the 30-day
20 enrollment window that we would be proposing with
21 that product and sought to get their feedback on that
22 proposal.

1 We did that on two separate -- I did
2 that on one occasion meeting with the IIEC, and I
3 believe Mr. Nelson had a separate presentation in
4 which he covered that same topic with the IIEC
5 customers.

6 Q. Well, we'll get to that, but my question
7 actually was a little bit different.

8 My question was, did Ameren conduct a
9 customer survey to determine the size of the
10 enrollment window?

11 A. We discussed that proposal with those
12 customers. I wouldn't consider that surveying them.

13 Q. Okay. And you said those meetings occurred
14 in February?

15 A. No, it was prior to the February filing. I
16 think they were probably I'm guessing in the third
17 quarter of '04.

18 Q. And these were informal discussions?

19 A. They were informal discussions, yes.

20 Q. Not an open meeting where the general
21 public was given notice or invited?

22 A. I didn't set up either one of those

1 meetings. I was invited to the one that I went to by
2 the IIEC so I don't know who they invited.

3 Q. But you didn't invite anybody?

4 A. Not that I recall.

5 Q. And you didn't give notice to the general
6 public?

7 A. No, I did not.

8 Q. And you're not aware of anybody providing
9 notice to the general public?

10 A. No, I'm not.

11 Q. And the IIEC is an ad hoc group, correct?

12 A. Can you define what you mean by an ad hoc
13 group?

14 Q. There are no set members of the group.

15 A. I think I've heard that said before. I
16 don't have any firsthand knowledge of their
17 membership per se.

18 Q. Would you accept subject to check that for
19 purposes of this proceeding, IIEC has just ten member
20 companies?

21 A. I can accept that subject to check.

22 Q. Did you inquire which specific companies

1 were being represented at your informal discussions?

2 A. I was introduced to various people. I
3 don't recall the names.

4 Q. And you didn't ask which specific companies
5 were being represented?

6 A. They told me which companies. I don't
7 recollect the companies.

8 Q. Do you know whether this was a unanimous
9 view on the enrollment date or whether it was just a
10 majority view?

11 A. I did not receive any specific feedback on
12 the proposal. We basically presented the proposal as
13 we intended to file it seeking their feedback. We
14 did not receive any specific feedback that I'm aware
15 of. At least on the occasion where I visited I did
16 not receive any feedback from them whether they liked
17 or disliked it.

18 Q. So it's your testimony here that it's just
19 your impression that they were comfortable.

20 You don't even know at that time if
21 all those companies that you met with were, in fact,
22 comfortable?

1 A. It's just a conclusion I've come to that if
2 people don't like something, they will speak up about
3 it and are more likely to be silent if they are
4 comfortable with it.

5 Q. But you don't know?

6 A. No, I don't know that for a fact.

7 Q. How many commercial and industrial
8 companies are there in the Ameren service
9 territories?

10 A. I don't know.

11 Q. Would you accept subject to check that
12 there are well over 5,000 customers with demands over
13 a hundred kW?

14 A. Over what level?

15 Q. A hundred kW?

16 A. Sure, subject to check I'll accept that.

17 Q. Did Ameren conduct a survey of RESs to
18 determine that 30 days was a good number of days to
19 keep the window open?

20 A. I recall a similar meeting with the RESs
21 where we discussed the auction proposal. I don't
22 specifically remember whether the 30-day open

1 enrollment period was discussed at that meeting, but
2 I do remember sitting down and talking with various
3 RESs -- I believe that you were present for that --
4 where we discussed our proposal prior to filing them.

5 Q. When I say survey though I guess I've got a
6 different understanding.

7 Did you ask for specific input with
8 regards to this component of the proposal in a
9 quantitative analysis to see how many RESs supported
10 it and how many industrial or commercial customers
11 supported it?

12 A. I am a little bit confused by your
13 question.

14 Were you asking if I sought
15 quantitative analysis of the RESs on this or did I do
16 a quantitative analysis of feedback I received from
17 RESs? I didn't get what your question was.

18 Q. Well, I guess I'm just trying to get at
19 whether you performed a quantitative analysis
20 regarding the number of RESs who -- well, and I guess
21 you don't recall whether the RESs supported this or
22 opposed it?

1 A. As I said earlier, I remember talking in
2 general of our auction proposal to the RESs. I don't
3 specifically remember whether we specifically
4 discussed the 30-day open enrollment window. I
5 assume we did, but I don't specifically remember
6 that.

7 Q. Well, now you are aware that the RESs do
8 oppose that, right?

9 A. I believe that the Coalition of Energy
10 Suppliers opposes it.

11 Q. Okay. So the IIEC is good enough with
12 their ten companies to talk for over 5,000 companies,
13 but for the RESs, you're not willing to allow the
14 coalition -- withdraw that.

15 Has Ameren performed any quantitative
16 analysis to determine the impact, if any, that a
17 longer enrollment window would have upon the rate
18 charged to customers?

19 A. I'm not aware of any quantitative analysis
20 that was performed.

21 Q. You would think that you would be aware if
22 it was performed?

1 A. I would agree.

2 Q. Would you agree that there are customer
3 benefits associated with giving customers additional
4 time in the enrollment window?

5 A. I believe I discussed in at least some
6 portion of my testimony that there was a tradeoff
7 that was looked at in a qualitative analysis in which
8 the tradeoffs were between giving suppliers
9 sufficient time to, excuse me, customers sufficient
10 time to review their opportunities in the market
11 versus the risk premium associated with a larger
12 enrollment window.

13 Q. How much does Ameren expect the additional
14 45 days as proposed by the Coalition of Energy
15 Suppliers would cost?

16 A. I don't think we have proposed or put
17 forward any number on that.

18 Q. Would you agree that any precise figure
19 that was calculated for such a premium prior to the
20 auction would be a theoretical premium?

21 A. What do you mean by theoretical premium?

22 Q. Didn't we talk about this earlier?

1 A. Did we? I'm sorry.

2 Q. Unlike the companies' Rider D, there would
3 not be a set payment, correct?

4 A. Well, when we talk about theoretical
5 premiums, we're talking is there a specific number in
6 the contract for that.

7 Should I apply that to all cases when
8 we talk about theoretical premium?

9 Q. Yeah. We won't talk about them again, I
10 promise.

11 A. Oh, good.

12 Q. Just for this line of questioning, let's go
13 with that.

14 A. There is no specific number in any of the
15 supplier contracts associated with this premium.

16 Q. So it's not the precise premium that will
17 be included in the price that will be incorporated
18 into the supplier's final bid, correct?

19 A. It will be the premium as determined by the
20 auction.

21 Q. And would you agree that once the auction
22 begins that there will be pressure put on suppliers

1 to revisit their assumptions regarding these
2 theoretical premiums?

3 A. I would agree that that's possible, yes.

4 Q. Are you aware that ComEd's current PPO has
5 a 75-day window?

6 A. I have heard that in these cases.

7 Q. Are you aware that switching is more robust
8 in the ComEd market than in the Ameren market?

9 A. I believe that to be the case.

10 Q. In your surrebuttal testimony at Line 586,
11 you talk about increasing the open enrollment period.
12 Do you see that?

13 A. Yes, I see that.

14 Q. Would you agree that for AmerenIP's
15 existing customers that the current enrollment period
16 can be as long as 45 days?

17 A. I'm sorry. The enrollment period for what?

18 Q. AmerenIP. They've got a PPO, right?

19 A. Oh, their PPO?

20 Q. Yes.

21 A. I don't know. I'm not familiar with
22 AmerenIP's PPO tariff.

1 Q. So you don't know whether the 30 days would
2 mean more or less than what AmerenIP's PPO tariff
3 contains?

4 A. That's correct.

5 Q. At Line 593, you state that many suppliers
6 have expressed their concerns regarding leaving bids
7 open for the 75 days versus the 30 days; is that
8 correct?

9 Strike that. I think I just changed
10 topics on you.

11 At Line 593 -- let me ask this more
12 generally.

13 Under Ameren's proposed Rider D, if no
14 customer takes the hourly service, would Ameren owe
15 the wholesale bidders any money?

16 A. So I have this straight, assuming that the
17 Rider D is accepted?

18 Q. Yes. Under your proposed Rider D, if no
19 customers take the hourly service, would Ameren owe
20 the wholesale bidders any money?

21 A. That would depend on whether or not any
22 customer is taking RES supply or not.

1 If there are customers on RES supply,
2 then yes, under our current proposal, we would be
3 making payments to the suppliers.

4 Q. Okay. And if there were no Rider D and no
5 customer were to take hourly service, would Ameren
6 owe the wholesale bidders any money?

7 A. We would not owe them money. They would
8 owe us money. They would owe us money for the
9 supplier fee associated with running the auctions is
10 what I'm referring to.

11 Q. At Lines 654 to 656, you indicate that
12 Rider D "compensates suppliers" for the risks
13 associated with customers taking service from RESs,
14 is that correct?

15 A. That's correct.

16 Q. And you performed no study to try to
17 quantify this risk, did you?

18 A. It would have been a qualitative, not a
19 quantitative study.

20 Q. And there's no quantitative analysis
21 presented in your testimony with regards to this, is
22 there?

1 A. No, there's not.

2 Q. And you already indicated that suppliers
3 account for migration risk for a particular customer
4 group when they price the power, correct?

5 A. Yes, I did say that.

6 Q. And they're going to have to estimate a
7 premium for this risk -- strike that.

8 Suppliers are going to have to
9 estimate a premium for the risk that Ameren bundled
10 service customers will elect to take this service as
11 well, won't they?

12 A. I'm not sure what you mean by bundled
13 customers. Are you referring to those taking the LFP
14 product?

15 Q. Yes.

16 A. No, they would not. The LFP customers
17 would be required to stay on the product the entire
18 term of the contract, so it would not be possible for
19 them to switch from the LFP product to the LRTP
20 product.

21 Q. But going into this auction, you don't have
22 those classes of customers, right? You have delivery

1 services customers and bundled service customers,
2 right?

3 A. That's correct.

4 Q. And the suppliers are going to have to
5 estimate a premium for the risk that those former
6 bundled service customers are going to elect to take
7 this service, correct?

8 A. I believe that's a little bit of a
9 different premium.

10 Q. But they are going to have to include a
11 premium for that risk, correct?

12 A. For the risk of not knowing on the day of
13 the auction which customers are going to initially
14 sign up for one product?

15 Q. Including this product, the LRTP product.

16 A. I'm just trying to clarify what you're
17 asking.

18 Yes, I agree with that, but I believe
19 that's a different risk than what we're stating here.

20 MR. TOWNSEND: No further questions, Your
21 Honor.

22 JUDGE JONES: Thank you, Mr. Townsend.

1 It looks like we're at Mr. Rosen or
2 the Attorney General, Ms. Hedman or Ms. Dale.

3 MS. HEDMAN: We have no questions.

4 JUDGE JONES: Mr. Rosen?

5 CROSS-EXAMINATION

6 BY MR. ROSEN:

7 Q. Mr. Blessing, you're an employee of Ameren
8 Service Company, is that correct?

9 A. That is correct.

10 Q. Do you also perform services for any of the
11 entities that generate power under the Ameren
12 Corporation name?

13 A. I do not currently have any
14 responsibilities other than those utilities.

15 Q. Now, you say your current -- and I'm trying
16 to figure this out because I'm not certain whether
17 your testimony is consistent with the written
18 testimony, but it says here that your current
19 position consists of procuring power supplies for
20 Ameren Corporation's regulated utilities in Illinois
21 and administering the contracts that result.

22 A. I'd have to be referred to my direct

1 testimony.

2 Q. That's at Page 2.

3 A. That's what I referred to. Without
4 flipping back and checking, yes.

5 Q. But I think you said during
6 cross-examination that you're not actually
7 negotiating power supply of contracts, is that
8 correct?

9 A. That's correct. My current
10 responsibilities are more truly related to post-2006
11 procurement, developing a process to be able to
12 procure power post-2006.

13 Q. At any point other than today, obviously
14 before today, did you actually have the
15 responsibility of procuring power supplies for Ameren
16 Corporation's regulated utilities?

17 A. No, I have not.

18 Q. In your current position, is it also your
19 responsibility to look at alternative methods of
20 acquiring power through means other than the auction
21 process which is the subject of this hearing?

22 A. Yes, it was. We basically started with a

1 blank slate and built our way towards what we felt
2 was the best approach.

3 Q. Okay. And what other processes did you
4 look at?

5 A. Really, the approach we took is we first
6 looked at two distinct different product types that
7 we could procure: one being the vertical slice
8 products that we're proposing here in the auction;
9 the second being a horizontal product.

10 We looked at that and first came to
11 the conclusion that we felt the vertical slice made
12 the most sense.

13 At that point, we looked at two --

14 Q. Okay. Can I just stop you? I don't mean
15 to interrupt you.

16 A. Go ahead.

17 Q. Why did you conclude that the vertical
18 slice product was a better approach than the
19 horizontal product?

20 A. Because it places the risk of managing a
21 portfolio of generation assets on the parties that
22 are best equipped to do that, that being equal sales

1 suppliers.

2 Q. And why is it you don't think regular
3 utilities should share any of that risk?

4 A. I really just don't think it would make
5 sense for us to take on a portion of the risk that we
6 are not best equipped to handle.

7 If there's other entities in the
8 marketplace that can more efficiently handle that
9 risk, it makes more sense to put that risk upon those
10 entities.

11 Q. And you don't think the buyers should have
12 any part in trying to determine what risks there
13 are -- let me start over.

14 And you don't think that the buyer
15 should have any responsibility trying to manage the
16 risk that is associated with acquiring wholesale
17 electricity?

18 A. I believe I answered this before.

19 I think that the wholesale market is
20 best equipped to manage that risk.

21 Q. Well, but there's sellers on the wholesale
22 market, right, and those are the companies that

1 generate power?

2 A. Correct.

3 Q. And then there's buyers on the wholesale
4 market, and that's utility companies for instance
5 such as the ones that are involved in this process?

6 A. Correct.

7 Q. So you're saying that all of the risks
8 should be on the seller side and the buyers should
9 have no risk at all?

10 A. I think the risks should be on the party
11 that can best mitigate that risk.

12 Q. All right. Well, let's change the
13 scenario. Let's say that in a situation... Let's
14 change the process here somewhat.

15 Rather than the ICC preapproving this
16 auction process, if the situation was that you went
17 out and acquired electricity on the wholesale market
18 and then turned around and filed a rate case to
19 determine what prices would be charged to consumers,
20 do you still think under those circumstances all the
21 risks should be on the suppliers and none of the
22 risks should be on the buyers?

1 A. Maybe I am misunderstanding your question
2 but I think your scenario puts the risk on the
3 utility in that case.

4 Q. Okay. And why is that?

5 A. I believe you've set up the scenario where
6 the utility procures a portfolio of generating
7 assets. Is that not correct?

8 Q. Yes.

9 A. Okay.

10 Q. All right. And is it risk also in the
11 sense that there's the risk that in a regulatory rate
12 case, there might be a determination that the utility
13 didn't acquire the electricity in a prudent,
14 reasonable, and just manner?

15 A. I do not have a vast experience in rate
16 cases, but my understanding is that it is possible
17 with any rate case that the Commission could decide
18 that some portion of the costs were imprudent.

19 Q. And if they did that, that means that
20 there's the possibility that what you pay for the
21 electricity may not be passed on dollar to dollar to
22 the customers of the utilities that are here, isn't

1 that correct?

2 A. Yeah, that's correct.

3 Q. Now, let's turn to the vertical products
4 that are here.

5 Other than the auction, what other
6 processes did the company look at in acquiring the
7 vertical slice products other than the auction?

8 A. We also considered an RFP approach.

9 Q. And obviously, that was rejected. Why is
10 that?

11 A. We felt that the auction process was more
12 efficient, more transparent, and would result in
13 having a better opportunity to result in a
14 competitive outcome.

15 Q. Was there also some discussion that if the
16 companies had used the RFP process, there might be
17 some traditional regulatory review before those RFP
18 prices were passed on to the customers of the
19 companies in this proceeding?

20 A. I don't recall any discussion of that
21 manner when discussing the differences between an RFP
22 and an auction.

1 Q. The prices of the vertical products you're
2 establishing RFP on, what is your understanding as to
3 whether or not those prices had to go through
4 regulatory review before they were passed on in one
5 form or another to the customers of the companies
6 here?

7 A. My understanding is that an RFP would be a
8 mechanism similar to an auction that we could use to
9 procure the same products that we are procuring
10 today.

11 My understanding would also be that a
12 rate prism could be put in place in a similar review
13 of the process before the auction could be put in
14 place.

15 I don't see those as being dissimilar
16 along those lines.

17 Q. Okay. So you're saying that if the company
18 had decided to use an RFP instead of an auction, they
19 would be again asking the Commission to preapprove
20 the process?

21 A. They could, yes.

22 Q. And is part of the reason that the RFP and

1 the auction procedures being proposed here are being
2 endorsed by the company that there's no real prudence
3 review of the auction results after the fact?

4 A. We are proposing the auction process
5 because we think it is a very transparent process
6 that will enable us to get a good competitive
7 outcome.

8 Q. Okay. And whatever that competitive
9 outcome is, it's your understanding that the company
10 is asking the Illinois Commerce Commission and all of
11 us as consumers to sort of accept that as a prudent
12 way of the company acquiring those prices and
13 therefore passing it on without any further
14 regulatory overview of the staff. Is that a fair
15 statement?

16 A. We're asking the Commission to review the
17 prudence of that process here.

18 Q. Okay. And if they approve the process,
19 that means in your opinion, they don't have to really
20 look hard at the prices that result from that
21 process. Is that a fair statement?

22 A. They don't have to review the process

1 itself after the fact. They will review whether the
2 process was followed properly.

3 Q. Let me ask you this. We know that there's
4 going to be a clearing price established through the
5 auction process. Is that fair to say?

6 A. Sure.

7 Q. And in terms of the clearing price that's
8 determined for the auction, are you expecting anyone
9 from your company to do an independent analysis of
10 those clearing prices to determine whether they seem
11 to be fair competitive prices to pass on to the
12 consumer?

13 A. I'm not sure how that would be
14 accomplished.

15 Q. Okay. And are you asking the Illinois
16 Commerce Commission to do the same analysis?

17 A. I don't believe we're specifically asking
18 them to do that analysis.

19 Q. Now, how much switching is there among the
20 residential customers of the three companies here?

21 A. I'm sorry. How much switching?

22 Q. Yeah, as of today.

1 A. How much switching do the residential
2 customers do? I'm not aware of any.

3 Q. Okay. And why is that?

4 A. I guess it's because there are no RECO
5 suppliers out marketing to them would be my guess.

6 Q. And has there been any analysis done by the
7 company of how much residential switching might occur
8 between the years of 2007 and 2011?

9 A. Not that I'm aware of.

10 Q. Has there been any analysis done by the
11 companies here of how many RESs will be in existence
12 to serve residential customers between the period
13 2007 and 2011?

14 A. Not that I'm aware of.

15 Q. Do you expect there to be any? You don't
16 know?

17 A. I don't know.

18 MR. ROSEN: Nothing further.

19 JUDGE JONES: Will there be any redirect?

20 MR. TROMBLEY: Yes, sir.

21 JUDGE JONES: Are you ready to proceed with it?

22 MR. TROMBLEY: Yes, I am.

1 JUDGE JONES: Let me just clarify one thing
2 first.

3 CES Cross Exhibit No. 1 has not been
4 offered, correct?

5 I'm not suggesting anything by the
6 question. I just want to be clear.

7 MR. TOWNSEND: No, you're correct, Your Honor.
8 It had not been offered though at this time I would
9 offer it into evidence.

10 JUDGE JONES: All right. CES cross-examination
11 Exhibit No. 1 has been offered into the evidentiary
12 record.

13 Are there any objections to the
14 admission of it?

15 MR. TROMBLEY: Your Honor, I am not sure why
16 that is relevant at all to the Ameren cases. That is
17 the ComEd proposal and testimony that was filed in
18 the ComEd case. Mr. Blessing said that he did not
19 review that when developing his testimony.

20 MR. TOWNSEND: Right, and actually, I think
21 that's significant in and of itself, Your Honor, that
22 he did not consider that in preparing his testimony.

1 In addition, we already have had
2 significant cross-examination in the combined record
3 with regards to this proposal and so this provides a
4 reference for that as well.

5 JUDGE JONES: You're not saying there's been
6 common cross with respect to this page of testimony
7 sponsored by Mr. McNeil, correct?

8 MR. TOWNSEND: No. Actually, this is the
9 subject of cross-examination by Mr. Rippie of
10 Dr. O'Connor for example talking about the ComEd
11 surrebuttal proposal. I mean, all last week, there
12 were a number of witnesses that talked about the
13 ComEd surrebuttal proposal.

14 MR. RIPPIE: The guy with the gray hair is
15 Hanzlik.

16 MR. TOWNSEND: Oh, I'm sorry.

17 JUDGE JONES: For clarification, you're not
18 stating that the cross-examination of ComEd witness
19 Mr. McNeil was the subject of common cross.

20 MR. TOWNSEND: No. The McNeil cross was not,
21 but during the cross-examination of Dr. O'Connor for
22 example, this proposal was discussed, you know, at

1 length, and I think that it was also discussed in
2 cross-examination of other coalition witnesses, and
3 it is the alternative proposal that's out there that
4 was the subject of cross-examination today.

5 JUDGE JONES: All right. The motion is denied.
6 There has been objection to it. I think the
7 cross-references to the other docket, the use of
8 questioning on exhibits from the other docket are
9 difficult questions to deal with. Obviously there
10 are a lot of cross-references from one docket to the
11 other through the course of these two proceedings. I
12 don't think that's any secret.

13 A somewhat similar question came up
14 this morning where there was some cross-examination
15 questioning by Ms. Hedman regarding an exhibit put in
16 and the testimony put in in the ComEd matter.
17 Ms. Hedman was allowed to proceed with that, with the
18 question that was asked, and here you did get to ask
19 a series of questions of this witness with respect to
20 this particular cross exhibit, and I think it was
21 appropriate to allow you to do that.

22 I think the problem we run into

1 ultimately here is that this exhibit itself is not in
2 the record in this docket at this point obviously,
3 and so you did ask the witness some questions about
4 it. I just don't see how this witness has really
5 authenticated this document or this chart over the
6 objections of counsel for Ameren.

7 I think maybe that's where the
8 difference comes into play here, but I'll be the
9 first to recognize that there are some overlaps in
10 the two cases, and there are many cross-references.

11 A little latitude does need to be
12 given from time to time. Like I said, there comes a
13 point of where to draw the line, and here, I just do
14 not believe -- I believe the questioning was
15 appropriate, but when it comes to authenticating this
16 document in this case for purposes of it being
17 offered into the record in this case, I believe
18 that's where the ruling must fall.

19 MR. TOWNSEND: Your Honor, that's not to
20 preclude argument with regards to this in brief but
21 rather just it's not part of this evidentiary record,
22 correct?

1 JUDGE JONES: Well, my ruling says what it
2 says. You offered the exhibit and I made the ruling,
3 and that's probably a good place to leave it at this
4 time.

5 Redirect?

6 MR. TROMBLEY: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. TROMBLEY:

9 Q. Mr. Blessing, Dynegy's counsel asked you
10 whether the Ameren Companies used a load research
11 program.

12 Do you recall that?

13 A. I recall that.

14 Q. They also asked you some questions about
15 the cost of that program.

16 A. Yes, I recall that.

17 Q. Do those load research programs currently
18 offer the information required or asked for by Dynegy
19 to allow the Ameren Companies to produce the load
20 forecasts they requested?

21 A. No, not that I'm aware of.

22 Q. Can you explain that?

1 A. My understanding of the load research
2 program that they have is based off of setting up
3 samples for the existing customer classes. They're
4 not specifically set up for the customer classes or
5 the product groupings of the post-2006 proposal.

6 Q. Would it require additional cost and effort
7 and work and time to use those tools to prepare the
8 information requested by Dynegy?

9 A. Yes, I believe it would.

10 Q. I have a significantly different question.

11 Mr. Reddick asked you about generation
12 portfolios for various individual customers; two
13 examples being a customer greater than 1 megawatt, a
14 large industrial customer, and then a customer
15 between 400 kilowatts and 1 megawatt.

16 A. If I remember correctly, the one customer
17 used energy primarily in the daytime and the other
18 used it around the clock. Yes, I recall that.

19 Q. Correct.

20 Is it your understanding that a
21 supplier, any supplier would develop a generation
22 portfolio to serve the individual customer as opposed

1 to an aggregation of customers?

2 A. I would imagine that a supplier would
3 develop its portfolio based off all the customers he
4 is serving, not individual portfolios for each
5 customer.

6 MR. TROMBLEY: Just one second.

7 (Pause)

8 Q. Mr. Townsend asked you a series of
9 questions about load profiles and the differences
10 between load profiles for ComEd and Ameren.

11 Do you remember that?

12 A. Yes, I recall that.

13 Q. He asked you I believe whether you knew of
14 any reason why the customer load profiles for ComEd
15 and Ameren customers between 400 kilowatts to
16 1 megawatt would be the same, and I believe you said
17 the answer was no, you knew of no reason.

18 Do you recall that?

19 A. I recall a similar question. I don't know
20 if that -- you know, I recall generally a question of
21 that nature.

22 Q. Well, I'll ask a slightly different

1 question just to clarify.

2 Do you know of any reason why the
3 customers in that same customer grouping, why their
4 load profiles would be different or the same between
5 ComEd and Ameren?

6 A. No, I don't.

7 Q. Or those customers -- well, strike that.

8 Have you produced a forecast of
9 switching post-2006, customer switching?

10 A. No, I have not.

11 Q. Again, to clarify, at one point in
12 Mr. Townsend's testimony, I think he asked you a
13 question about the cost to residential customers for
14 grouping 400 kilowatt to 1 megawatt customers with
15 residential customers and that the cost to
16 residential customers would be inappropriately high.

17 Do you recall that?

18 A. I believe that was related to a specific
19 proposal where suppliers would include a risk
20 premium. Yes, I recall that.

21 Q. Just to clarify, you also suggested in a
22 different answer that if the customers were included

1 in the greater than one megawatt grouping that there
2 would be also a different allocation of that risk by
3 the customer, the bidders?

4 JUDGE JONES: I'm not sure we quite got that
5 question. Why don't you ask that again.

6 MR. TROMBLEY: I will.

7 Q. Did you also answer that question -- strike
8 that. Strike that whole thing.

9 Mr. Townsend asked you about a meeting
10 you had with the IIEC customers. He asked you
11 whether you were aware of any notice being given to
12 the general public with respect to that meeting. I
13 believe you said you did not.

14 A. That's correct.

15 Q. Did the Ameren Companies give notice to the
16 general public of their application in these dockets?

17 A. I believe it's available to the general
18 public, yes.

19 Q. There may be some confusion about what your
20 current position is at Ameren.

21 Just to clarify the record, can you
22 describe what your current position is with respect

1 to the acquisition of power for the Ameren
2 Corporation regulated utilities?

3 A. My current responsibilities are to develop
4 a process in which we procure power post-2006.

5 Q. And that is what you intended on Lines 26
6 through 28 of your direct testimony?

7 A. That is what I intended, yes.

8 Q. One or two more questions.

9 You were asked a series of questions
10 about which market participants were best able to
11 manage the risk.

12 Can you please describe why market
13 participants other than Ameren are the best
14 participant to manage risks associated with the BGS
15 load?

16 A. The Ameren utilities currently do not have
17 the skill sets within the companies to manage those
18 risks, and what I mean there is the
19 generation-related risk of the BGS supply.

20 MR. TROMBLEY: I have no further questions.

21 JUDGE JONES: Recross?

22 Mr. Lakshmanan?

1 MR. LAKSHMANAN: Thank you, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. LAKSHMANAN:

4 Q. Mr. Blessing, you were asked some questions
5 about the load research questions by Mr. Trombley.

6 A. Yes.

7 Q. As I understand it, Ameren has only one
8 division between customers that it is proposing in
9 the auction, those below one megawatt and those above
10 one megawatt, is that correct?

11 A. That's correct.

12 Q. So to the extent it collects load research
13 data, all one would need to do is determine whether
14 the data is being collected for those above
15 one megawatt or below one megawatt and then aggregate
16 it accordingly, is that correct?

17 A. I do not work in a load research
18 department. I never have. I don't know that it's as
19 simple as that.

20 I believe they attempt to set up
21 samples that in some statistically reasonable manner
22 represents the load.

1 I don't know that those samples are
2 set up to do that for the classes that we'll be
3 procuring post-2006.

4 Q. The number of classes will go down after
5 2006, isn't that correct? It wouldn't go up.

6 A. I agree they will go down.

7 Q. Do you have any idea what the cost would
8 be -- strike that.

9 I believe you indicated it might be
10 costly to reconfigure that data and those programs to
11 meet the new classifications, is that correct?

12 A. I believe I said I thought there would be
13 some costs associated with that.

14 Q. Do you have any idea of what the magnitude
15 of those costs are?

16 A. No, I do not.

17 Q. In Ameren's upcoming delivery services
18 case, will it be proposing the same one split between
19 customers, those above one megawatt and those below,
20 or will it have additional splits?

21 A. I do not know.

22 Q. Do you know if the load research data will

1 be used in determining information related to the
2 delivery services tariff case?

3 A. I really do not know what is entailed in
4 developing the delivery services filing. I can't
5 answer that. I'm sorry.

6 Q. Does Ameren -- strike that.

7 Do the Ameren utilities have to supply
8 schedules to MISO currently?

9 A. I believe they do.

10 Q. I'm sorry. Do or do not?

11 A. I believe they do, yes.

12 MR. LAKSHMANAN: That they do. Okay. Thank
13 you. No other questions.

14 JUDGE JONES: Recross from others?

15 RECROSS-EXAMINATION

16 BY MR. REDDICK:

17 Q. Mr. Blessing, do you recall my questions
18 regarding the service for various type of customers
19 were respecting owned generation or wholesale supply
20 products, not just generation?

21 A. I'm sorry. I didn't follow the question.
22 Could you repeat that for me, please?

1 Q. When I asked you questions about how most
2 efficiently to serve the load of certain customers, I
3 believe I phrased my questions in terms of owned
4 generation or wholesale supply products.

5 Do you recall that?

6 A. I don't recall owned generation. I believe
7 it was putting together a portfolio of wholesale
8 products. I don't specifically remember the criteria
9 of owning the generation being part of that.

10 Q. Would you agree that the load could be
11 served by a combination of wholesale supply products?

12 A. Yes, I agree.

13 Q. And if a supplier so chose and owned
14 generation, it could use a combination of generation
15 that it owned and wholesale supply products as well?

16 A. That's correct.

17 Q. With respect to the questions I asked about
18 the illustrative small customer or a big customer --

19 JUDGE JONES: Just a minute. Is this recross
20 on redirect?

21 MR. REDDICK: Yes.

22 Q. Mr. Trombley reminded you that my questions

1 about the illustrative group customers were about
2 those illustrative customers rather than groups.

3 Do you recall that?

4 A. Yes, I do.

5 Q. With respect to groups of customers that
6 share those same characteristics, would your answers
7 be the same?

8 A. The answers to your questions?

9 Q. Yes, sir.

10 A. Okay. So you're saying that there's a
11 group of customers, all of which have the same
12 characteristics?

13 Q. Yes.

14 A. Yes, it would.

15 MR. REDDICK: Nothing further.

16 JUDGE JONES: Mr. Rosen?

17 RECROSS-EXAMINATION

18 BY MR. ROSEN:

19 Q. One of the entities of Ameren Corporation
20 is Ameren Energy, is that right?

21 A. Yes.

22 Q. What do they do?

1 JUDGE JONES: Is this --

2 MR. ROSEN: Directly related to redirect.

3 JUDGE JONES: Go ahead.

4 A. The question is what does Ameren Energy do?

5 Q. Yes.

6 A. They are a short-term trading organization
7 that maximizes the portfolio generating assets of the
8 unregulated generating company and also the AmerenUE
9 generating assets.

10 Q. So in layman's language, do they manage the
11 portfolio risk of the companies that are part of
12 Ameren that sell electricity on the wholesale
13 markets?

14 A. Yes.

15 Q. And do you have an idea of how difficult it
16 might be for these same groups of people to manage
17 the wholesale electric acquisition risk for the
18 buyer?

19 A. Is it possible -- I'm not sure I understand
20 your question.

21 Q. I mean if they manage the risk on the sell
22 side in terms of a wholesale market, how hard would

1 it be then to change hats and manage the risk on the
2 buy side?

3 A. I believe it would be possible for them to
4 do so, but I don't believe it would be possible for
5 them to do it for both the buying side and the
6 selling side at the same time.

7 Q. Okay. Well, I can understand that, but if
8 all of a sudden the Ameren utilities needed to manage
9 the risk on the buy side, it would be possible I
10 would imagine to transfer some of the Ameren Energy
11 employees who do it on the sell side to the buy side,
12 would it not?

13 A. I would venture to guess. I don't work at
14 Ameren Energy, but I imagine that they are currently
15 staffed based on the workload that they have, so I
16 don't think simply transferring a portion of those
17 employees to do new tasks would be possible.

18 I would agree that we could duplicate
19 that organization to have two separate organizations
20 to do that same task.

21 Q. All right. Well, how long ago did Ameren
22 divest or did the utilities divest themselves of the

1 generating companies?

2 A. I don't know the exact year. 2000 time
3 frame, does that sound reasonable?

4 Q. Okay. And at some point, did Ameren on the
5 utility side expect they'd have to acquire
6 electricity on the wholesale market?

7 A. We signed contracts that expired at certain
8 points in time, so we knew that we would have to
9 procure power, yes.

10 Q. Okay. And wasn't there any consideration
11 done by Ameren that they may have to hire people on
12 the buy side to manage the portfolio risk of electric
13 wholesale products?

14 MR. TROMBLEY: Your Honor, these questions are
15 going well beyond --

16 MR. ROSEN: No, they're not.

17 JUDGE JONES: Let him finish.

18 MR. TROMBLEY: -- the subject of my redirect.

19 JUDGE JONES: Overruled.

20 MR. ROSEN: Okay. Thank you.

21 THE WITNESS: I'm sorry. Could you please
22 repeat the question for me?

1 Q. Wasn't there any consideration by Ameren
2 that it was possible beginning in 2006 that they
3 would have to hire people on the buy side of the
4 wholesale market to manage an electric wholesale
5 product portfolio?

6 A. At that time, we did not know how we would
7 procure the supplies necessary so I don't know that
8 we could say with certainty at that time that we
9 would need those services post-2006.

10 Q. There wasn't any discussion at all about
11 the possibility that you might have to hire these
12 kind of people in 2006?

13 A. We didn't know what type of products we
14 would be procuring.

15 Q. Okay. Now, let me ask you this.

16 It's my impression...

17 I consider you a pretty bright person.
18 Do you want to disagree with that?

19 A. I won't argue with that.

20 Q. Okay. Thank you.

21 And I'm going to venture to say that
22 Mr. Baxter seems to be a pretty bright person. You

1 won't argue with that?

2 A. I certainly do not want to argue with that.

3 Q. Okay. And how about Mr. Nelson? He's your
4 boss. Do you want to argue with that?

5 A. I do not want to argue with that either.

6 Q. All right. Do you think these individuals
7 have the skill and ability to hire if they have to
8 people who could manage the portfolio risk of
9 acquiring electricity on the wholesale level?

10 A. Yes, I believe they do.

11 Q. So you think in at least some period of
12 time if need be, the Ameren Companies on the utility
13 side could develop the expertise of managing an
14 electrical portfolio risk on the wholesale level from
15 the buy side?

16 A. Yes, they could but it would not make sense
17 to do that prior to knowing what type of products you
18 intend to purchase.

19 MR. ROSEN: I have nothing further.

20 JUDGE JONES: Other recross?

21 Mr. Townsend, did you have anything?

22 MR. TOWNSEND: No. Thank you, Your Honor.

1 JUDGE JONES: Thank you, Mr. Blessing. You may
2 step down.

3 (Witness excused.)

4 MR. FLYNN: Our last witness is
5 Mr. Pfeifenberger. I would note that given the hour
6 and the fact that Mr. Rosen has 15 minutes for him,
7 Mr. Pfeifenberger has checked back into his hotel for
8 two nights.

9 JUDGE JONES: All right. We'll break for ten
10 minutes; come back at 4:25.

11 (Recess taken.)

12 JUDGE JONES: Back on the record. We may be
13 ready for the final witness.

14 Does Ameren call the witness at this
15 time?

16 MS. EARL: We call Johannes Pfeifenberger.

17 Good afternoon, Mr. Pfeifenberger.

18 MR. PFEIFENBERGER: Good afternoon.

19 JUDGE JONES: Could you identify yourself,
20 please?

21 MS. EARL: Laura Earl with Ameren.

22 JUDGE JONES: Thank you.

1

2

JOHANNES P. PFEIFENBERGER

3

called as a witness herein, on behalf of Ameren

4

Companies, having been first duly sworn on his oath,

5

was examined and testified as follows:

6

DIRECT EXAMINATION

7

BY MS. EARL:

8

Q. Could you please state and spell your name

9

for the record?

10

A. My name is Johannes (J-o-h-a-n-n-e-s),

11

middle initial P., Pfeifenberger

12

(P-f-e-i-f-e-n-b-e-r-g-e-r).

13

Q. Could you also state your business address

14

for the record?

15

A. For the Brattle Group, my business address

16

is 44 Brattle Street, Cambridge, Massachusetts 01980.

17

Q. By whom are you employed and in what

18

capacity?

19

A. I'm the principal and director of the

20

Brattle Group.

21

Q. Have you been asked to prepare direct

22

testimony for the Ameren Companies in this case?

1 A. Yes, I have.

2 Q. Do you have before you what has been marked
3 Respondent's Exhibit 7.0, the direct testimony of
4 Johannes P. Pfeifenberger and Respondent's
5 Exhibit 7.1, qualifications of Johannes P.
6 Pfeifenberger, and Respondent's Exhibit 7.2?

7 A. Yes, I do.

8 Q. Was this direct testimony and the
9 corresponding exhibits prepared by you and under your
10 supervision?

11 A. Yes, they were.

12 Q. Do you have any corrections or additions to
13 that testimony?

14 A. No.

15 Q. Is the testimony you prepared true and
16 correct to the best of your knowledge?

17 A. To the best of my knowledge.

18 MS. EARL: Your Honor, I move to admit
19 Respondent's Exhibits 7.0, 7.1 and 7.2 into evidence.

20 JUDGE JONES: Any objection?

21 Let the record show there is not.

22 Respondent's Exhibit 7.0, direct

1 testimony, 7.1, CV, and 7.2, article, are admitted
2 into the evidentiary record as filed on e-docket on
3 February 28, 2005.

4 (Whereupon Respondent's Exhibits
5 7.0, 7.1, and 7.2 were admitted
6 into evidence at this time.)

7 MS. EARL: This witness is available for
8 cross-examination.

9 JUDGE JONES: Ms. Hedman?

10 MS. HEDMAN: Thank you.

11 And let me note for the record that I
12 believe I had the honor of cross-examining the first
13 witness in these two dockets, Mr. Clark, lo those
14 many days ago, and so I'm pleased to have the honor
15 of the last cross-examination.

16 JUDGE JONES: That's worth a notation in the
17 record I believe.

18 MS. HEDMAN: Good afternoon, Mr. Pfeifenberger.
19 My name is Susan Hedman. I'm with the Office of the
20 Attorney General, and I represent the people of the
21 State of Illinois in these Ameren dockets.

22 THE WITNESS: Good afternoon.

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CROSS-EXAMINATION

3

BY MS. HEDMAN:

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Q. On Page 4, Line 82 through 86 of your testimony, you assert that policymakers and market participants have generally agreed that the objective of supplying post-transition regulated service options at market-based prices is best met through transparent Commission-approved competitive procurement processes that are open to a diverse group of suppliers, is that correct?

A. That's what it states.

Q. By the use of the term market participants, do you mean consumers or suppliers or both?

A. All kinds of market participants. As I explained in my testimony, in various states, competitive transparent procurement processes have been approved, and they have been approved with the support of a great variety of market participants including consumers.

Q. Did you survey residential consumers in Illinois or any other state to see if they agreed

1 with this statement at Page 4, Lines 81 through 86?

2 A. I have not conducted a survey about how
3 many people agreed with the statement in these lines.

4 Q. And so you didn't survey commercial
5 customers in Illinois or any other state to see if
6 they agreed with this statement?

7 A. I did not survey anybody after I wrote this
8 testimony to see how many people had reviewed the
9 statement, but the statement is based on my review of
10 procurement processes in other states and the type of
11 support that these processes gather in those other
12 states.

13 Q. In any of those other states, was there a
14 vote taken among customers on any of these proposals?

15 A. I'm not aware of any votes by customers,
16 but to the extent the customer groups or their
17 representatives supported the proposal before the
18 Commission, I was to consider that support.

19 Q. But you don't actually know if more
20 customers supported than not in any of these states,
21 do you? You say they generally agreed, but you
22 didn't take a survey of --

1 MS. EARL: Objection. Asked and answered.

2 JUDGE JONES: Any response?

3 THE WITNESS: I have not conducted a --

4 JUDGE JONES: Just a minute.

5 Any response to the objection,

6 Ms. Hedman? Just hold off on the answer.

7 THE WITNESS: Oh, I'm sorry.

8 JUDGE JONES: That's okay. That's not a

9 problem.

10 MS. HEDMAN: There have been a few

11 nonresponsive responses which is why I've continued

12 to reask the question.

13 MS. EARL: I believe the witness has answered

14 the questions fully and to the best of his ability.

15 JUDGE JONES: Overruled. The question stands.

16 Please answer it if you remember it.

17 THE WITNESS: Yes. As I said before, I have

18 not conducted a formal vote or a formal poll or I'm

19 not aware of there being a popular vote of how many

20 customers stood behind their consumer representative.

21 Q. BY MS. HEDMAN: And on Page 82, or, excuse

22 me, on Page 4, Line 82, you also mention policymakers

1 as a group that you assert generally agree with your
2 statement, is that right?

3 A. Yes.

4 Q. Did you conduct a survey of legislators in
5 Illinois or any other states to see if they actually
6 agreed with that statement?

7 A. I have not conducted a survey of
8 legislators, but again, I have conducted a survey of
9 the support that these procurement processes have
10 gathered in various states.

11 Q. Did you survey any elected officials to
12 determine whether they agreed with this statement?

13 A. Let me first point out my statement is
14 about policymakers, and elected officials aren't the
15 only policymakers.

16 I've included in my mind in this term
17 regulators, state regulators, federal regulators as
18 well, but I have not conducted a survey of
19 legislators on this particular part.

20 Q. On Page 6 of your testimony at Lines 122 to
21 125, you assert that a vertical tranche approach is
22 "used in more retail access states facing policy

1 issues similar to those in Illinois."

2 Is that what it says there?

3 A. I think you paraphrased it, but that is, to
4 be correct, that is about what it says there.

5 Q. It seems to be a sentence fragment.

6 Do you mean to say that a vertical
7 tranche approach is used in more retail access states
8 facing policy issues similar to those in Illinois
9 than in retail access states not facing policy issues
10 similar to those in Illinois?

11 A. What I meant to say is the vertical tranche
12 approach is used in more retail access states --
13 well, let me step back to make sure I understood the
14 question correctly.

15 I think what I meant to say is that
16 the vertical tranche approach is used in most retail
17 access states facing policy issues similar to those
18 in Illinois.

19 Q. And there are a total of 16 retail access
20 states, is that correct?

21 A. I think that's the number I've given in my
22 testimony.

1 Q. Can you name them?

2 A. The 16 retail access states -- what did you
3 ask, the retail access states with similar policy
4 issue to those in Illinois?

5 Q. The question is to name the 16 retail
6 access states.

7 A. Could I ask you to refer you to the portion
8 of my testimony that refers to those 16 states? I
9 mean, I'm not sure whether it's 16 or 21.

10 Q. Well, you've testified just now that you
11 say most retail access states facing policy issues
12 similar to those in Illinois use vertical tranches,
13 and I'm trying to verify that statement, and that
14 would involve starting with how many retail access
15 states there are and then identifying how many of
16 those states use vertical tranches, and ultimately,
17 I'm going to ask you some questions about their
18 similarities to Illinois.

19 A. Okay. I used a lot of numbers in my
20 testimony. I'm just trying to get a sense as to the
21 16 states whether you're referring to a statement in
22 my testimony or whether you're --

1 Q. I'm referring to the statement that you
2 just made. I asked you whether there were a total of
3 16 retail access states, and you agreed.

4 A. I said that sounds right, but as I look
5 them up, I think there might be 21.

6 Q. Are you referring to a particular segment
7 of your testimony?

8 A. I'm referring to Table 1 of Exhibit 7.2.

9 Q. And can you list the 17 states that have
10 adopted retail access?

11 A. I said 21, and they are listed in Table 1
12 of my Exhibit 7.2.

13 Q. That table conflicts with the map in your
14 article, on the second page of your article, doesn't
15 it?

16 A. I don't believe so.

17 Q. Well, some of the states in Table 1 have
18 only retail access for a limited number of large
19 industrial customers, isn't that right?

20 A. That's right.

21 Q. And at least one of those states in that
22 table has suspended retail access, isn't that true?

1 A. For customers who have not already
2 switched.

3 Q. So let's look at the table, Table 1.

4 A. Yes.

5 Q. How many of these retail access states use
6 procurement approaches that you have characterized as
7 a vertical tranche approach?

8 A. Nine.

9 Q. Which ones?

10 A. I list them on Page 9 of my direct
11 testimony. They include Connecticut, the District of
12 Columbia, which I count as a state in this
13 tabulation, Maine, Maryland, Massachusetts, New
14 Jersey, Ohio, Rhode Island, and Texas.

15 Q. I wasn't quite with you there. We have
16 Rhode Island, Massachusetts, Maine, Connecticut,
17 Maryland, D.C., and where else?

18 A. The list I gave you was Connecticut, the
19 District of Columbia, Maine, Maryland, Massachusetts,
20 New Jersey, Ohio, Rhode Island, and Texas, and that
21 is listed on Page 9, Lines 192 and 193 of my
22 testimony.

1 Q. So nine states, is that correct?

2 A. Yes.

3 Q. So nine states use vertical tranches.

4 How many of the retail access states
5 that use a vertical tranches approach do you think
6 face policy issues similar to those in Illinois?

7 A. Maybe 13.

8 Q. We have nine states that have vertical
9 tranche approaches.

10 I'm asking you of those states which
11 face policy issues such as those in Illinois?

12 A. Of those nine?

13 Q. Of those nine.

14 A. I think most, if not all of those nine face
15 policy or faced policy issues similar to those in
16 Illinois.

17 Q. So you say all nine do?

18 A. I have not evaluated every single one but I
19 believe all nine do, yes.

20 Q. How many of those nine vertical tranche
21 states produce electricity at below the average cost
22 in the United States?

1 MS. EARL: Objection. Could you please define
2 what below average cost means?

3 MS. HEDMAN: Well, Ameren didn't seem to have
4 any trouble in its annual report making statements
5 along these lines. Ameren was able to say lowest
6 cost generators in the nation.

7 Certainly if you're acquainted with
8 this field, you must have a sense of what the average
9 cost of generation is say in PJM or in the Midwest
10 ISO.

11 A. Relative to what average?

12 Q. The average cost of generation.

13 A. In that state? Are you asking me about how
14 many states have generators that produce below the
15 average cost in that state?

16 Q. No. My question was about the United
17 States.

18 A. The United States. Go ahead.

19 Q. The question was about the United States
20 and I asked you how many of the nine vertical tranche
21 states that you've identified generate electricity at
22 less than the average cost of generation in the

1 United States?

2 JUDGE JONES: Just a minute, Mr. Pfeifenberger.
3 We'll get back to you.

4 Is the objection still pending or is
5 that question acceptable?

6 MS. EARL: I believe the way it's restated -- I
7 was just looking for Ms. Hedman's definition of below
8 average cost for the benefit of the witness.

9 Could you please restate that
10 question?

11 MS. HEDMAN: And I'd be happy with a mean or a
12 median, whatever the witness is familiar with.

13 I'm asking you how many of these
14 states produce electricity at less than the average
15 cost for electricity production in the United States.

16 A. Electricity is not produced by the states.
17 The electricity is produced by individual generators,
18 and there are very different costs, the high cost and
19 low cost generators in almost every state, and I'm
20 sure there are below average cost generators in all
21 of these states.

22 Q. Yes. And if you had an average cost of

1 generating capacity in each state, do any of these
2 states have an average cost of generation that is
3 below the national average?

4 Do you know the answer to that
5 question?

6 A. I have not analyzed this question because I
7 don't think it's relevant to my testimony.

8 Q. How many of these nine states have
9 installed generating capacity that exceeds load by
10 more than ten percent?

11 A. I would think most, if not all of them.

12 Q. New Jersey has installed generating
13 capacity that exceeds load by more than ten percent?

14 A. I haven't counted specifically for New
15 Jersey, but load serving entities in PJM have to have
16 a reserve margin of more than ten percent, so whether
17 the generator is physically located in New Jersey or
18 is contractually obligated to serve load in New
19 Jersey, New Jersey as a whole would have capacity
20 serving New Jersey that's more than ten percent of
21 the load.

22 Q. But I asked you about generating capacity

1 located in the state.

2 Does D.C., Washington, D.C., the
3 District of Columbia, have generating capacity in
4 excess of ten percent of the load?

5 A. Probably not but Chicago probably does not
6 have that either.

7 Q. Does Illinois?

8 A. Generally, states are able to serve the
9 load, and that serving load requires to have capacity
10 that exceeds load by more than ten percent, so I
11 don't think the question of where the generator is
12 physically located has any relevance to my testimony.

13 Q. But you don't really know whether any of
14 these states have installed generating capacity that
15 exceeds load by 10 percent, 15 percent or 20 percent,
16 do you?

17 A. I have not analyzed that question but I
18 would assume many, if not most of these states do.

19 Q. But you don't know, isn't that correct?

20 A. I have not analyzed that question, but
21 based on my industry experience, that's generally the
22 case.

1 Q. How many of these nine states are served by
2 more than one ISO or RTO?

3 A. At least one.

4 Q. Is that Ohio?

5 A. Yes, but I think it might also be true for
6 New Jersey. In fact, I'm almost certain it's true
7 for New Jersey. I think New Jersey might actually be
8 served by three RTOs. New Jersey companies are in
9 different RTOs, so I would have to look back at a map
10 to tell you precisely, but these RTO boundaries don't
11 nicely conform with state boundaries.

12 Q. And you don't present any data showing what
13 has happened to procurement prices or electric rates
14 in these states that have adopted vertical tranches,
15 is that correct?

16 A. My testimony does not show rate impacts
17 either in states with vertical tranches or in states
18 with upward tranche procurement processes.

19 Q. Now, on Page 7 of your testimony at Lines
20 144 through 145, you suggest that a vertical tranche
21 approach allows for participation of a wide diverse
22 group of suppliers, is that correct?

1 A. Yes.

2 Q. Now, it's more likely that a wide diverse
3 group of suppliers would be able to bid on those
4 vertical tranches in an auction where no entity is
5 able to exercise market power; would you agree?

6 MS. EARL: Objection. That question is beyond
7 the scope of his testimony.

8 JUDGE JONES: Response?

9 MS. HEDMAN: The witness stresses the
10 importance of a wide diverse group of suppliers, and
11 I'm trying to explore the conditions under which a
12 wide diverse group of suppliers would be able to bid
13 on these vertical tranches.

14 MS. EARL: Mr. Pfeifenberger's testimony does
15 not provide any information regarding market power
16 and witness Frame this morning was actually the
17 better witness to answer that question.

18 JUDGE JONES: I think the ruling will be the
19 question is allowed. If the witness has an answer to
20 it, it's another close call, but the witness is
21 testifying as an expert. He presents some testimony
22 here that while not going directly to that particular

1 issue I think does provide the opportunity for
2 counsel to proceed with that type of question so
3 that's the ruling.

4 So we'll ask you to answer the
5 question if you have an answer.

6 Do you recall the question?

7 THE WITNESS: Could you repeat the question,
8 please?

9 Q. BY MS. HEDMAN: The question is is it more
10 likely that a wide diverse group of suppliers would
11 be able to bid on vertical tranches in an auction
12 where no entity is able to exercise market power?

13 A. I don't think the question of number of
14 suppliers necessarily relates to the question of
15 market power. I believe that a more transparent
16 procurement process will attract a larger group of
17 suppliers even if there were some market power.

18 Q. Do you think it's true that for a wide
19 diverse group of suppliers to supply one or more
20 vertical tranches that sufficient transmission
21 capacity needs to be available to allow those
22 suppliers to deliver electricity to the service

1 territory of the load serving entity for whom the
2 auction is being conducted?

3 A. I don't think that is necessarily the case
4 in our fuel markets such as what we have here in
5 Illinois now because the contracts that are auctioned
6 off are really financial in nature and not physical
7 in nature, so even if Synergy for instance were to be
8 in the auction, they wouldn't have to get point to
9 point transmission service anymore.

10 Within MISO, there are 120,000
11 megawatts of network resources, and all these network
12 resources are deemed by MISO to be deliverable within
13 the MISO footprint, so I don't think the question of
14 number of suppliers and transmission import
15 capability is correlated in the MISO market.

16 Q. You don't have any concerns about the
17 adequacy of transmission capacity in either MISO or
18 PJM?

19 MS. EARL: Objection again. That's beyond the
20 scope of his testimony.

21 JUDGE JONES: Response?

22 MS. HEDMAN: He says that we need a wide

1 diverse group of suppliers, and I'm trying to find
2 out how they're going to get there and then exploring
3 the conditions under which that would be able to
4 occur.

5 The witness seems to be saying that
6 neither transmission constraints nor market power are
7 a factor.

8 MS. EARL: The witness does not, in fact,
9 address that. The witness says, and I quote, "The
10 approach allows for participation of a wide diverse
11 group of suppliers."

12 He's referring to the effect of the
13 competitive procurement process on the amount and the
14 nature of the suppliers.

15 JUDGE JONES: The objection is overruled.
16 Again, it's somewhat of a borderline call here, but I
17 think that given the fact the witness is testifying
18 as an expert and some of the issues in the testimony
19 that he is presenting that have been cited by
20 Ms. Hedman are sufficient to permit her to proceed
21 with this line of questioning.

22 The only qualification I would put on

1 that is that we're asking the witness to answer the
2 question if he has an answer.

3 Do you recall the question?

4 THE WITNESS: Can you repeat the question,
5 please?

6 Q. BY MS. HEDMAN: The question was whether
7 you have any concerns about the adequacy of
8 transmission capacity and/or market power in MISO or
9 PJM.

10 A. Not with respect to the selection of the
11 vertical tranche approach by Ameren.

12 I believe the vertical tranche
13 approach, as I say in my testimony, is the best
14 available approach to procure power in this market
15 regardless of -- even if you assume some level of
16 market power or even if you're concerned about market
17 power transmission or market power related to
18 transmission input constraints, I think any
19 procurement approach will be subject to these
20 assumptions, and this particular approach is the best
21 available approach to attract the most competitive
22 suppliers to the procurement process.

1 Q. I note on Page 1 of your testimony that you
2 state you've actually testified and submitted reports
3 on transmission access at FERC, is that correct?

4 A. That's right.

5 Q. In fact, earlier this year, you
6 participated in the Exelon PSEG merger docket at
7 FERC, didn't you?

8 A. That's right.

9 MS. EARL: Objection. This line of questioning
10 appears to be beyond the scope of his testimony.

11 MS. HEDMAN: Your Honor, it says in black and
12 white "I testified and submitted reports on the
13 subject of electric utility restructuring, retail
14 access, transmission access, and tariff design in a
15 number of cases before the Federal Energy Regulatory
16 Commission." And then it goes on after that.

17 MS. EARL: It's merely a background statement.
18 It's merely providing information about the witness's
19 expertise, the type of experience that he's had, but
20 Ms. Hedman's question brings up a specific instance
21 which is not a part of his testimony.

22 JUDGE JONES: Objection is overruled.

1 I think there's broad latitude given
2 in cross of experts about their qualifications or
3 their experience that they list in support of those
4 qualifications, and I believe that this falls into
5 that category, so if I'm right about that, then the
6 line of questioning is appropriate.

7 MS. HEDMAN: Thank you.

8 JUDGE JONES: Do you recall the question, sir?

9 THE WITNESS: Yes.

10 JUDGE JONES: All right. Please answer it.

11 THE WITNESS: Yes, I have participated in that
12 case.

13 Q. BY MS. HEDMAN: And, in fact, you prepared
14 affidavits that were submitted to FERC by Ameren that
15 discuss transmission access and market power in MISO
16 and PJM, is that correct?

17 A. I don't think it was about transmission
18 access, but it was about the market concentration
19 effect of the Exelon PSEG merger.

20 MS. HEDMAN: I'd like this marked as AG Cross
21 Exhibit 19 and this marked as AG Cross Exhibit 20.

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(Whereupon AG Cross Exhibits 19
and 20 were marked for
identification as of this
date.)

MS. HEDMAN: The motion to intervene and
protest is Exhibit 19. The supplemental protest is
20.

Q. Mr. Pfeifenberger, the documents that you
have in front of you have been marked as AG Cross
Exhibit 19 which is the motion to intervene and
protest of Ameren Services Company appending your
affidavit and AG Cross Exhibit 20 which is the
supplemental protest of Ameren Service Company which
I believe also attaches your affidavit, is that
correct?

A. That's what it appears to be.

Q. On Page 6 of your affidavit in AG Cross
Exhibit 19, at the top of that page at sub 2, I
believe you identify a concern about whether Exelon
and PSEG as a merged entity would engage in
post-merger market behavior that could increase west

1 to east power flows that impede the operational and
2 economic coordination across the elongated Midwest
3 ISO-PJM seam, is that correct?

4 A. That's what --

5 MS. EARL: Objection. This statement appears
6 to go far beyond the scope of Mr. Pfeifenberger's
7 direct testimony, and the statement appears to relate
8 more to power issues related to PJM west than it
9 would to MISO.

10 JUDGE JONES: What is the purpose of this line
11 of questioning?

12 MS. HEDMAN: The purpose of the line of
13 questioning is to develop the point he's made about
14 the need to have a diverse -- let me make sure I use
15 his language -- a wide diverse group of suppliers,
16 and we identified in the course of questioning
17 transmission as being a factor in ensuring that there
18 is a wide diverse group of suppliers.

19 Mr. Pfeifenberger happens to be an
20 expert on this very topic for this very region for
21 the very company that is the applicant in this case,
22 and to the extent that this is an important issue in

1 the record and is within the scope of his testimony,
2 I think we should have the benefit of his considered
3 views on this topic.

4 MS. EARL: Again, I believe Ms. Hedman is
5 injecting a different meaning into
6 Mr. Pfeifenberger's testimony regarding a wide
7 diverse group of suppliers, and, in fact, what the
8 entire sentence was about which was the competitive
9 procurement auction which is the subject of
10 Mr. Pfeifenberger's testimony. Mr. Pfeifenberger has
11 not testified as to market power.

12 The line of questioning that
13 Ms. Hedman has identified relates solely to market
14 power, and Mr. Pfeifenberger has not presented
15 testimony about and is not being offered as an expert
16 in market power.

17 MS. HEDMAN: Indeed, I didn't read the portion
18 of his testimony that relates to market power which
19 would be number one. He does indeed express some
20 market power concerns.

21 I read only the concern he expresses
22 relating to transmission and the seams issue, and let

1 me just note for the record --

2 MS. EARL: I'm sorry, I'm sorry. Which
3 document are you referring to?

4 MS. HEDMAN: Page 6 of the motion to intervene
5 and protest, or, excuse me, his affidavit which is
6 attached to the motion to intervene and protest.

7 MS. EARL: And did you have a reference to his
8 testimony?

9 MS. HEDMAN: The reference to his testimony in
10 the FERC docket or here?

11 MS. EARL: Well, I wasn't sure. I wasn't sure
12 which testimony you were referring to.

13 MS. HEDMAN: The only testimony at issue is the
14 testimony which he's offering in this docket. I
15 believe this affidavit was, I don't know if you can
16 say it was really testimony. It was a sworn
17 statement offered by Ameren and received into
18 evidence or I should say received by FERC in that
19 docket.

20 MS. EARL: Right. And you said something about
21 his testimony regarding market power, and as you
22 said, the direct testimony in this docket is the

1 relevant testimony, and where were you referring to a
2 reference to market power?

3 MS. HEDMAN: The item that appears in Exhibit
4 A, his affidavit immediately prior to the portion
5 that I read, relates to market power.

6 MS. EARL: But not in his direct testimony.

7 MS. HEDMAN: And I didn't read the other
8 concern that he expresses here which does relate to
9 market power. I'm reading the concern that he
10 expressed that relates to a seams issue between the
11 Midwest ISO and PJM.

12 MS. EARL: And again, Mr. Pfeifenberger is
13 not --

14 JUDGE JONES: Just a minute.

15 Ms. Hedman, starting with the
16 testimony in the current docket, what portions of
17 that are you relying on here for this line of
18 questioning?

19 MS. HEDMAN: Two items. One is his discussion
20 on Page 7 that the vertical tranche auction approach
21 allows for the participation of a wide diverse group
22 of suppliers.

1 JUDGE JONES: What line numbers, please?

2 MS. HEDMAN: That would be Line 145 on Page 7
3 of his testimony, and we had several follow-up
4 questions that discuss factors that would allow for
5 participation by a wide diverse group of suppliers.

6 Additionally, on Page 1 of his
7 testimony at Lines 20 through 22, he indicates that
8 he has testified and submitted reports on the subject
9 of electric utility restructuring, retail access,
10 transmission access, and tariff design in a number of
11 cases before the Federal Energy Regulatory
12 Commission. There's one such case.

13 JUDGE JONES: There was an objection a few
14 minutes ago about any questioning at all with respect
15 to that testimony at the bottom of Page 1, and that
16 objection was overruled because it appeared to be at
17 least at that point that those questions were ones
18 that pertain to the witness's experience and
19 qualifications as an expert, particularly given the
20 wide range of topics that are noted at the bottom of
21 Page 1 as part of what this witness has addressed in
22 the past and where, so I think that line of

1 questioning was proper.

2 Also some leeway was given with
3 respect to cross-examination of the witness with
4 respect to the testimony on Line 7.

5 I'm having a problem with the
6 questions about Cross Exhibits 19 and 20 and where
7 those fit into these essentially two lines of
8 questioning, one about Page 7 and the other about his
9 qualifications.

10 So how does the -- AG 19, is that what
11 you're asking about?

12 MS. HEDMAN: Yes.

13 JUDGE JONES: And where exactly is the material
14 from AG 19 that you're looking to ask about?

15 MS. HEDMAN: I am looking at the top of Page 6
16 of AG 19. The document is provided really for
17 context. His affidavit is attached as Exhibit A, and
18 on Page 6 of Exhibit A, Mr. Pfeifenberger in his
19 affidavit states that he has some concerns about
20 post-merger market behavior increasing west to east
21 power flows that impede the operational and economic
22 coordination across the elongated Midwest ISO-PJM

1 seam.

2 Now, in his direct testimony,
3 Mr. Pfeifenberger talks about the desirability of
4 participation by a wide and diverse group of
5 suppliers, and he actually asserts that his approach
6 allows for that. In fact, in another forum he's
7 expressed concerns that would suggest that that
8 participation by a wide diverse group of suppliers
9 may not be possible.

10 JUDGE JONES: Are you impeaching him here? Is
11 this impeachment cross?

12 I think we're getting a confused
13 record to some extent here because we've been
14 bouncing back and forth between sort of testing the
15 witness's credentials on the one hand and a few lines
16 of testimony on Page 7 of his direct testimony, and
17 we're being asked to allow some questions about a
18 lengthy affidavit that was attached to the motion
19 which has been marked for identification as AG 19.

20 MR. RIPPIE: Your Honor, if I could briefly,
21 the extent that I have an objection depends upon its
22 purpose. If this is impeachment, I would argue that

1 it is not.

2 The witness was quite clear that he
3 was relying on the 120 odd thousand megawatts of
4 capacity in MISO and not on the ability to move power
5 over the seam.

6 My concern is, in fact, that this is
7 not impeachment, and that concern is enhanced by the
8 fact that more than the affidavit of the witness was
9 marked here.

10 And if, in fact, this is an attempt to
11 explore substantive testimony on this witness's view
12 of a proposed merger transaction which has now been
13 modified, I have a real problem with that.

14 There was a time and place for that
15 and a docket in which that was proper, and this isn't
16 it.

17 MS. HEDMAN: Your Honor, I'm focusing on
18 something very narrow here. I'm focusing on a
19 concern that he has clearly expressed in his sworn
20 statement that goes directly to the question of
21 whether or not there will be participation by this
22 wide and diverse group of suppliers.

1 We've heard a lot about seams issues
2 from some other witnesses. Their testimony goes to
3 whether we will have a wide and diverse group of
4 suppliers.

5 Mr. Pfeifenberger is asserting that
6 there will be a wide diverse group of suppliers, and
7 this is evidence that bears on that issue.

8 JUDGE JONES: Again, getting back to my
9 question of a minute ago and we'll give Ms. Earl a
10 chance to weigh in again in a minute also.

11 Is this line of questioning being
12 asked to impeach this witness or is it being asked
13 just to make a record on the truth of the matters
14 that are asserted in this affidavit that was attached
15 to the FERC filing?

16 That's not clear to me, and that's why
17 I'm trying to get some clarification.

18 Now, maybe you've answered that. I'm
19 not sure in the give and take that's occurred over
20 the last several minutes, but if you could clarify
21 that now, it would be appreciated.

22 MS. HEDMAN: Well, I confess to being a little

1 confused myself.

2 When I read Dr. Pfeifenberger's
3 testimony or Mr. Pfeifenberger's testimony, it
4 frankly didn't occur to me that he would deny that
5 transmission access and an absence of market power
6 would promote more participation and a wider and
7 diverse supply.

8 I assumed that this testimony would
9 directly follow.

10 I may indeed be offering it as
11 impeachment testimony at some point.

12 JUDGE JONES: All right. Ms. Earl?

13 MS. EARL: I would reiterate Mr. Rippie's
14 argument that this is not impeachment. The exhibit
15 that is attached to this motion to intervene in a
16 FERC matter and the statement that's been identified
17 has really nothing to do with what Mr. Pfeifenberger
18 has testified to in his direct testimony.

19 In his direct testimony, he states
20 that the competitive procurement auction approach
21 allows for participation of a wide diverse group of
22 suppliers. He's testifying regarding the procurement

1 approach that's at issue that we are discussing in
2 this docket. He's not testifying regarding PJM west
3 which appears to be at issue in Exhibit A of the
4 Cross Exhibit 19.

5 MS. HEDMAN: Your Honor, may I be heard?

6 JUDGE JONES: Yes.

7 MS. HEDMAN: First, let me say I'm very
8 gratified to hear Ms. Earl use the term PJM west but
9 more to the point, the statement in the witness's
10 testimony on Page 7 is an assertion of fact, and the
11 assertion is that this approach allows for
12 participation of a wide diverse group of suppliers.

13 Now, the questioning that I've done
14 with him while he's on the stand asks whether that
15 fact being true is dependent upon certain conditions,
16 transmission access, lack of market power. I could
17 probably go down a long list.

18 This auction that you describe isn't
19 occurring in a vacuum. It's occurring in a
20 particular service territory in a particular
21 independent system operator framework and in a
22 particular market, and I'm trying to test the truth

1 of this assertion.

2 JUDGE JONES: Ms. Earl, it's your motion.

3 MS. EARL: I would agree that the competitive
4 procurement auction would not occur in a vacuum, and
5 the Ameren Companies have provided several witnesses
6 that have testified to market power issues,
7 transmission issues, all of the other issues that
8 Ms. Hedman refers to.

9 This witness solely testifies
10 regarding the competitive procurement auction
11 approach.

12 JUDGE JONES: Thank you.

13 I'll make a ruling at this time.

14 This line of questioning on cross will
15 not be permitted for the purpose of establishing the
16 truth of the matters asserted in the pleading made in
17 the motion before FERC and more specifically in the
18 witness's affidavit thereto.

19 However, Ms. Hedman has indicated that
20 in her opinion, she should be permitted to proceed
21 with that for impeachment purposes.

22 That appears to be somewhat of a

1 stretch but we've been giving latitude in
2 cross-examination of these expert witnesses.

3 I think that if Ms. Hedman wants to
4 proceed with this line of questioning for impeachment
5 purposes, it will be permitted.

6 MS. HEDMAN: Thank you, Your Honor.

7 Q. Mr. Pfeifenberger, on Page 7 of your
8 testimony, you assert that the vertical tranche
9 auction approach allows for participation of a wide
10 diverse group of suppliers, is that correct?

11 A. Yes.

12 Q. However, in the Exelon merger case in a
13 sworn affidavit, isn't it true that you express
14 concern that post-merger market behavior could
15 increase west to east power flows that impede the
16 operational and economic coordination across the
17 elongated Midwest ISO-PJM seam?

18 MS. EARL: Objection. I see no relation
19 between the two statements that Ms. Hedman has
20 pointed out.

21 JUDGE JONES: Objection overruled. I just
22 ruled. You're basically just wanting to reargue the

1 motion. I indicated that Ms. Hedman would be allowed
2 to proceed with some questioning for impeachment
3 purposes and I assume that that's what this is.

4 Is that what this is?

5 MS. HEDMAN: Yes.

6 JUDGE JONES: So we're sort of one question in
7 and we get the same objection.

8 In any event, the ruling is the same.
9 The line of questioning on that is limited to that,
10 and you may proceed.

11 MS. HEDMAN: Thank you.

12 Q. Did I properly characterize the concern
13 that you express at the top of Page 6 in Item 2 of
14 your affidavit that's appended to the motion to
15 intervene in protest of Ameren Service Company?

16 A. In this paragraph 17 of my affidavit, I did
17 say that the merger raises concerns that had not been
18 addressed in the affidavit testimony and analysis at
19 the time, and the second concern is the one you've
20 read.

21 So this is a concern that I have
22 expressed in my affidavit at the time. However, that

1 concern has been addressed, but most importantly, it
2 has absolutely nothing to do with the statement that
3 I made in my testimony here that the vertical tranche
4 procurement approach allows the participation of a
5 wide range of suppliers.

6 A) That is even true within the
7 content, within the boundaries of MISO. Even if
8 nobody from PJM would be participating in Ameren's
9 auction, it would still allow the participation of a
10 wide range of suppliers.

11 Moreover, the specific concern
12 expressed here is about west to east flows. If that
13 does cause transmission constraints which I think you
14 are pointing to, that would actually decrease the
15 market price in northern Illinois, and I don't see
16 how that would be a concern for the purpose of
17 procuring power in Illinois, in particular, not in
18 southern Illinois.

19 Q. Well, isn't it true on Page 4 of the
20 affidavit appended to the supplemental protest of
21 Ameren Service Company that you indicate a concern
22 that Exelon could bid western PJM resources in a

1 manner that changes power flows and manipulates
2 transmission constraints along the intertwined
3 PJM-Midwest ISO seam in an attempt to increase prices
4 for their larger combined basic generation resources
5 in PJM?

6 MR. RIPPIE: Your Honor, this was the basis of
7 my original objection which is that this is not
8 impeachment. This is an attempt to read a bunch of
9 material into a record that should have been read
10 into a record in another docket where there were
11 witnesses to respond. I just don't see this as
12 impeachment at all.

13 JUDGE JONES: Is this still part of your line
14 of questions for impeachment purposes?

15 MS. HEDMAN: That's the end of my line of
16 questioning, Your Honor.

17 JUDGE JONES: Is this also for impeachment
18 purposes?

19 MS. HEDMAN: Yes. The witness asserts now that
20 there will be participation. He's previously offered
21 testimony that there are constraints that could limit
22 that kind of participation, and I simply want that on

1 the record.

2 JUDGE JONES: Well, I will allow the
3 questioning.

4 Again, I just want to emphasize that
5 the question is being allowed for purposes of giving
6 Ms. Hedman an opportunity to impeach or attempt to
7 impeach the witness with it. It is not being allowed
8 into the record by this ruling for the truth or
9 accuracy or content of the matter stated therein.

10 Q. BY MS. HEDMAN: So I believe the question
11 pending is whether or not you expressed a concern on
12 Page 4 of the affidavit appended to the supplemental
13 protest of the Ameren Company, Ameren Services
14 Company, that Exelon, after the merger with western
15 PJM resources in a manner that changes power flows
16 and manipulates transmission constraints along the
17 intertwined PJM-Midwest ISO seam in an attempt to
18 increase prices for their larger combined basic
19 generation resources in eastern PJM?

20 A. That's exactly what I previously talked
21 about.

22 First of all, this concern has been

1 addressed by the FERC in its ruling; mainly, that
2 they will look at whether the mitigation prospects
3 will, in fact, work, so this concern I think is not a
4 concern that exists anymore given the FERC's
5 commitment to evaluate whether the mitigation
6 proposed and implemented would actually work.

7 But more importantly, this sentence,
8 and I assume you were reading from paragraph 13 of
9 that page, says exactly that if this is a concern, it
10 could conceivably erase prices in eastern PJM which
11 means it would decrease prices in western PJM.

12 So to the extent that this is a
13 concern, it would actually reduce the market prices
14 in Illinois, and, you know, I'm not sure that has
15 anything to do with the statement in my testimony
16 that you refer to that the procurement approach
17 proposed here allows participation of a wide variety
18 of suppliers.

19 I think that's true irrespectively,
20 and if such participation from a wide variety of
21 suppliers is done at lower market prices, I'm not
22 sure how the State of Illinois would be concerned

1 about that.

2 Q. So you're not concerned about manipulation
3 of transmission constraints along the PJM-Midwest ISO
4 seam?

5 JUDGE JONES: Is this still part of your line
6 of impeachment questions?

7 MS. HEDMAN: Yes.

8 JUDGE JONES: Thank you.

9 A. I am concerned about that, but I'm not
10 concerned that that would affect the statement I made
11 in my testimony. I'm not concerned about my position
12 that the proposed procurement approach is the best
13 available procurement approach to address such
14 concerns and overcome such concerns.

15 And moreover, as I just told you, I
16 think the FERC's commitment to monitor the
17 implementation of mitigation prospects should take
18 care of the specific concern raised here, but that
19 doesn't mean I'm in general not concerned about
20 transmission or manipulation of transmission. In
21 fact, I want to always be concerned about these
22 things, but that still makes the proposed procurement

1 approach a sound approach.

2 MS. HEDMAN: I don't think I have anything
3 further for the witness.

4 JUDGE JONES: Thank you, Ms. Hedman.

5 Is there redirect?

6 MR. ROSEN: I just have five minutes.

7 JUDGE JONES: Off the record.

8 (Whereupon an off-the-record
9 discussion transpired at this
10 time.)

11 JUDGE JONES: All right. Back on the record.

12 Mr. Rosen has indicated he has some
13 questions. If there are objections to the questions
14 as sounding like cross on cross, we will take that
15 up.

16 I suspect all that will mean though is
17 he will simply generate his own questions on the same
18 subject matter. He's not like an excluded witness.
19 He was in the room.

20 That will probably take longer for the
21 witness to get to the same point rather than sort of
22 the shortcut. It appears he did not have any

1 questions before he heard Ms. Hedman's cross. Now he
2 does, but I guess the difficulty at this point is
3 enforcing any sort of no cross on cross rule, we'll
4 probably end up with a longer cross-examination
5 session than will otherwise occur.

6 But if someone wants to object on that
7 basis, we will be happy to entertain that objection
8 and we will go from there.

9 MR. FLYNN: I think we hear you loud and clear,
10 Judge.

11 JUDGE JONES: Mr. Rosen?

12 CROSS-EXAMINATION

13 BY MR. ROSEN:

14 Q. Is it fair to characterize your testimony
15 as comparing a vertical tranche approach with the
16 portfolio management approach?

17 A. That's part of my testimony, yes.

18 Q. Okay. And do you consider yourself an
19 expert in the area of descending clock auctions?

20 A. I have not testified on descending clock
21 auctions. I mean, I know a little bit about it but
22 I'm not an expert.

1 Q. Okay. So you're really here more or less
2 to advocate a vertical tranche approach versus a
3 portfolio management approach, is that correct?

4 A. That's right.

5 Q. And you're not really here to give expert
6 opinion on a descending clock auction, is that
7 correct?

8 A. My testimony does address the point that
9 descending clock auctions have been used with great
10 success.

11 I'm not here to testify on the
12 specifics of the descending clock auction.

13 Q. Okay. When you said it's been used in
14 success, descending clock auction, how many states
15 have used descending clock auction and that is
16 actually used the results of the descending clock
17 auction?

18 A. Descending clock auctions are used very
19 widely by a variety of states and a variety of
20 industries, government agencies, internationally.

21 Q. Let's get on to the point.

22 How many descending clock auctions,

1 and you know what I'm referring to, are used to
2 acquire electricity on the wholesale level?

3 A. Oh, there are quite a few. I mean, the New
4 Jersey example is the obvious example.

5 As you know, you know, Ohio has tried
6 it, and I think descending clock auctions have also
7 been used by retail customers to buy power in a
8 number of occasions.

9 Q. Okay. In the Ohio auction, did they
10 actually use the prices that resulted from the
11 descending clock auction?

12 A. Used in what way?

13 Q. Did they charge it on to customers?

14 A. Well, they used the result of the
15 descending clock auction to verify that the price
16 plan proposed by First Energy were in customers'
17 interests, so if they used it but if that is not the
18 price and there were no contracts signed, then the
19 price of that auction was not really charged to
20 customers.

21 Q. In fact, in Ohio, did they not use the
22 prices resulted from the vertical clock auction

1 descending clock auction because they were higher
2 than the rates that were going into effect?

3 A. They were higher in that year, but as you
4 know, First Energy has to do it again this year. I
5 mean, it's a continuous process but, you know, the
6 Ohio auction industry experts have also commented
7 that the auction wasn't set up as well as the New
8 Jersey auction.

9 Q. Well, other than New Jersey, what other
10 states have used a descending clock auction to
11 acquire electricity and then used those clearing
12 prices as a basis to charge retail customers of those
13 utilities?

14 A. You know, I think that would have been a
15 question best asked to Dr. LaCasse.

16 Q. So you don't know is what you're saying?

17 A. Well, I'm aware of the New Jersey auction
18 and I'm aware that descending clock auctions have
19 been used by retail suppliers to buy power as well.

20 Q. I'm talking about in the electrical
21 industry, what other states other than New Jersey
22 have used the clearing price in the descending clock

1 auction as a basis of charging retail customers of
2 those utilities?

3 A. There are retail customers in other states
4 that have used descending clock auction to purchase
5 power.

6 Q. I'm talking about the purchase of
7 electrical power here.

8 A. Yeah, electrical power, purchased their
9 electrical power through descending clock auction.

10 Q. Okay. What other states than New Jersey?

11 A. You know, I just recall from the trade
12 press that every once in awhile you see articles that
13 some retail suppliers -- I think government agencies
14 in Washington, D.C. have used a descending clock
15 auction to purchase their power needs.

16 Q. What other states though in their entirety,
17 and that is where you have the whole State of
18 Illinois, the utilities are going to be acquiring, if
19 this is approved, power through a descending clock
20 auction? What other states in its entirety have used
21 clearing prices in descending clock auction to charge
22 retail customers other than New Jersey?

1 A. Well, New Jersey is the obvious example.

2 Q. Pardon me?

3 A. New Jersey is the obvious example.

4 Q. Any others?

5 A. Well, for this specific purpose, you know,
6 my testimony explains that there are a number of
7 procurement approaches that are very similar that
8 haven't specifically used a descending clock auction
9 but vertical tranche approaches and many other ways
10 that are used in the auction process as well.

11 As I said, there are nine states that
12 use such procurement processes, but only New Jersey
13 uses the New Jersey declining clock auction.

14 Q. One last question here.

15 In one of the examples you gave, I
16 think it was Maryland, they used a sealed bid auction
17 format, is that correct?

18 A. That's right.

19 Q. And that was not a descending clock
20 auction, isn't that correct?

21 A. That's a sealed bid auction.

22 Q. With the sealed bid auction format, was

1 there an auction manager, do you know?

2 A. Yes.

3 Q. And did the auction manager set the prices?

4 A. They were calculated from the auction
5 results, yes.

6 Q. Okay. But my question was, was it a
7 situation where the auction manager set the prices
8 and then the bidders bid power according to the
9 prices set by the auction manager?

10 A. Well, the process is different. The
11 bidders submit both quantity and prices, and the
12 auction manager selects the bids.

13 By selecting the bids, the auction
14 manager effectively sets the price that is charged to
15 customers.

16 Q. Okay. But it was the bidders who were
17 bidding the price and the amount of power they were
18 willing to sell at that price, isn't that correct?

19 A. That's right.

20 Q. And then the auction manager did what? Did
21 he pick the lowest price bid by those bidders in
22 comparison to the other bids made?

1 A. Well, it's not quite that simple, but, I
2 mean, that's a calculation, to select the most
3 favorable bids.

4 Q. Okay. And when they did the most favorable
5 bids, did price enter into what the auction manager
6 determined as the most favorable bid?

7 A. Yes.

8 Q. And did they try to pick the bid price that
9 was lower than the other bid prices?

10 A. Well, there's also a time component, so, I
11 mean, the present value of those prices is
12 considered.

13 So, yes, they look from the lower
14 price present values to the higher price present
15 values.

16 Q. And which one won -- the lower price
17 values?

18 A. As I said, there are a number of nuances to
19 this form and a number of exceptions to this form,
20 but in general, that's the concept.

21 MR. ROSEN: I have nothing further.

22 JUDGE JONES: Thank you, Mr. Rosen.

1 We'll try again. Any redirect,
2 Ms. Earl?
3 MS. EARL: No, Your Honor.
4 JUDGE JONES: Thank you, Mr. Pfeifenberger.
5 You may step down.
6 (Witness excused.)
7 JUDGE JONES: Off the record.
8 (Whereupon an off-the-record
9 discussion transpired at this
10 time.)
11 JUDGE JONES: Back on the record.
12 That concludes the hearings and the
13 cross-examination of the witnesses so thanks to the
14 parties for your participation and cooperation.
15 Thank you, Mr. Rippie and Ms. Earl, for marshalling
16 those scheduling updates on through and to all the
17 parties for their input that they provided to
18 Mr. Rippie so that those schedules could be updated.
19 It made a big difference in this case with so many
20 witnesses and parties, so thanks to all the parties
21 for all that.
22 And thanks also for the exhibit list.

1 I think that actually helped the cause as well. They
2 were complete and they were accurate, and the
3 benefits of that carry on through because once those
4 are entered into the e-docket entries, then that's
5 the road map. They'll be there for the record.

6 So we next meet at 11 a.m. on Tuesday,
7 September 20th.

8 I think that's about it for today. I
9 realize there's some other pending motions, some
10 delayed evidentiary matters, but cross-examination of
11 the witnesses is finished.

12 Anything else for the parties?

13 All right. At this time then let the
14 record show today's hearing is concluded, and as
15 noted, this matter is continued to a status hearing
16 date of Tuesday, September 20th at 11 a.m.

17 (Whereupon the hearing was
18 continued to September 20, 2005
19 at 11:00 a.m.)

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